

No. 16125 ✓

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**United States  
Court of Appeals**  
for the Ninth Circuit

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STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Appellant,

VS.

WALTER SCHOEPSKI,

Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court  
for the District of Montana.**

**FILED**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the  
District of Montana, Havre Division

Civil Action No. 1798

STEPHEN GRANAT, as Administrator of the  
Estate of MARY A. O'KEEFE, Deceased,  
Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

### PETITION FOR REMOVAL

To the Honorable United States District Court for  
the District of Montana:

Petitioner, Walter Schoepske, defendant in the  
above-entitled action, respectfully represents as follows:

1. This action is a civil action for damages arising out of an automobile collision brought by Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, plaintiff, against Walter Schoepske, defendant and petitioner herein, in the District Court of the Seventeenth Judicial District of the State of Montana, in and for the County of Phillips, and is now pending in said Court.

2. This petition is filed within twenty (20) days after service of summons upon petitioner in said action and within twenty (20) days after receipt by petitioner of a copy of the complaint filed by the

plaintiff in said action, setting forth the claim for relief upon which said action is based. Attached hereto, marked Exhibit "A," and made a part hereof is a copy of said summons, and attached hereto, marked Exhibit "B" and made a part hereof is a copy of said complaint. Said summons and complaint were received by petitioner through the United States mails at Beloit, Wisconsin, on the 25th day of November, 1955, enclosed in an envelope bearing the return address of the Secretary of State of the State of Montana. No other process, pleadings, or orders have been served upon petitioner in said action.

3. The matter in controversy in said action exceeds the sum or value of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.

Said action is between citizens of different states. Plaintiff was at the time of commencement of said action, and still is a resident and citizen of the State of Montana. Petitioner was at the time of commencement of said action and still is a citizen and resident of the State of Wisconsin.

5. Accompanying this petition and filed herewith is a bond with good and sufficient surety conditioned that the defendant will pay all costs and disbursements and incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

6. Petitioner will, upon the filing of this petition and said bond, forthwith give written notice thereof

to the above-named plaintiff and file with the Clerk of the District Court of the Seventeenth Judicial District of the State of Montana, in and for the County of Phillips, a copy of this petition, by all of which acts the above-entitled cause is removed from the District Court of the Seventeenth Judicial District of the State of Montana, in and for the County of Phillips, to the above-entitled District Court of the United States.

Wherefore, your petitioner prays that this Honorable Court assume jurisdiction of the above-entitled cause, and that said District Court of the Seventeenth Judicial District of the State of Montana shall proceed no further unless the case is remanded.

WALTER SCHOEPSKE,

By /s/ EDW. ALEXANDER,  
His Duly Authorized  
Attorney.

HALL, ALEXANDER &  
BURTON,

By /s/ EDW. ALEXANDER,  
Attorneys for Defendant.

Duly verified.

## EXHIBIT B

In the District Court of the Seventeenth Judicial  
District of the State of Montana in and for the  
County of Phillips

No. . .

STEPHEN GRANAT, as Administrator of the  
Estate of MARY A. O'KEEFE, Deceased,  
Plaintiff,

vs.

WALTER SCHOEPSKI,  
Defendant.

## COMPLAINT

Plaintiff complains and for cause of action against  
the defendant alleges:

1.

That Mary A. O'Keefe died, intestate, near Malta,  
Phillips County, Montana, on August 30th, 1955.

2.

That, by an order duly given and made, in the  
above-entitled Court, in the matter of the estate of  
Mary A. O'Keefe, deceased, on the 23rd day of Sep-  
tember, 1955, the plaintiff, Stephen Granat, was  
appointed Administrator of said estate, and he fur-  
nished a good and sufficient bond as ordered by the  
Court, took the oath of his office and Letters of  
Administration were issued to him, have not been  
revoked and he continues to be the Administrator of  
the estate of Mary A. O'Keefe, deceased.

## 3.

That, on the 30th day of August, 1955, there was, had been and continued to be a public highway, which was, is and continues to be a much-travelled highway, which was and is known as U. S. Highway Number 2, running between the cities and towns of Malta, Saco, Hinsdale and Glasgow, Montana, and easterly and westerly from said places and on the 30th day of August, 1955, at the time of the casualty hereinafter mentioned and described, said highway was a hard surfaced highway, dry and composed of black-top of a width of 22 feet from shoulder to shoulder, and, at the point of the said casualty, there was a bridge in the highway of the same width as the black top. That, approaching said bridge from the West on said highway, the bridge was visible for several hundred feet but immediately to the East of said bridge there was a rise in the highway, followed by a depression so that approaching traffic from the East of said bridge could not be seen by drivers from the West, while the vehicles were in the low part of the depression to the East of said bridge. (That at the high point to the East of said bridge there was on the north-erly side of said highway a warning sign on said day of the casualty warning drivers of vehicles going westward that there were narrow bridges in the highway to the West of said warning sign, which warning sign was plainly visible to all drivers operating their vehicles in a westerly direction approaching the aforesaid bridge where the casualty hereinafter mentioned and described occurred.) That from



said bridge, both easterly and westerly the center line of said highway was plainly marked with a white-painted line along the center of said highway. That, in the exercise of ordinary care, drivers of vehicles could pass each other in safety on said bridge.

## 4.

That, on the 30th day of August, 1955, Mary A. O'Keefe was driving her automobile along said highway at about the hour of 9:30 a.m. of said day; that plaintiff is informed and believes and therefore alleges that she was driving and operating said automobile in a careful and prudent manner, keeping a careful lookout ahead of her, guiding said automobile along the southerly half of said highway as she was driving easterly thereon, keeping the automobile she was driving under complete control and driving at a speed of approximately and no more than forty-five miles per hour as she approached and entered the bridge in the highway aforesaid and she continued so to drive until the collision hereinafter complained of occurred.

## 5.

That the day of August 30th, 1955, was clear and as plaintiff is informed and believes and therefore alleges, at the time of and before said collision, the highway immediately on each side of said bridge was free from obstruction to the view of drivers using said highway; at the time that Mary A. O'Keefe guided her automobile toward the approach and as she entered said bridge, her automobile was

in plain sight of the defendant, who was then and there coming over the high point to the East and driving in a westerly direction toward said bridge.

6.

That, at said time and place, the defendant was driving his automobile westerly from the said high point toward said bridge in a careless and negligent manner, as hereinafter explained and he guided and drove his automobile with great force and recklessness into collision with the automobile driven by Mary A. O'Keefe as she had reached a point, with her automobile, near the easterly end of said bridge.

7.

That the plaintiff is informed and believes and therefore alleges that the careless and negligent acts and omissions of the defendant, Walter Schoepski, were:

(a) Said defendant operated and drove his automobile without keeping a proper or any lookout as he approached and came to the place of the collision aforesaid.

(b) Said defendant negligently, carelessly, and recklessly failed and omitted to observe where he was driving as he approached and collided with the automobile driven by Mary A. O'Keefe.

(c) He negligently and carelessly permitted his automobile to be violently propelled into and against the automobile which Mary A. O'Keefe was driving.

(d) That said defendant (failed to heed said warning sign as he reached the high point to the East of said bridge and failed to slow down or slacken his speed) and he then and there completely failed to have and keep his automobile under control.

(e) He negligently and carelessly drove and swerved his automobile from the northerly to the southerly side of the highway and suddenly and without warning drove into the path of Mary A. O'Keefe's automobile as she was then and there approaching from the West and when she was less than ten feet from him on her own and the southerly side of said highway on the bridge aforesaid.

(f) That said defendant negligently and carelessly operated his automobile at a speed of more than sixty miles per hour (after he observed said warning sign at the high point to the East of said bridge) which speed was greater than was reasonable and proper under the conditions described and he crashed his automobile into the automobile then being driven by Mary A. O'Keefe, when there was, then and there more than twelve feet of clear driving space on said bridge where he could have guided his automobile past the automobile then being driven by Mary A. O'Keefe with perfect safety.

8.

That, as the direct and proximate result of the aforesaid careless and negligent driving and acts



and omissions of the said defendant, Walter Schoepski, Mary A. O'Keefe was knocked violently about inside the automobile she was then and there driving and she sustained a crushed chest, fracture of the shoulder and right leg, a violent concussion of the brain and a basal skull fracture and fracture of the cervical vertebrae of her spine, as a proximate result of which Mary A. O'Keefe died at the place of the casualty on the 30th day of August, 1955.

## 9.

That immediately before said collision, as plaintiff is informed and believes and therefore alleges, Mary A. O'Keefe was in good health and uninjured and she had a life expectancy of 31 years and upward, during which time her husband and children would have received pecuniary benefits from her during her continued life and she had been and would have continued to be during the remainder of her life a devoted wife and mother to her husband and children; she was a graduate pharmacist and a housewife, who had been and would have continued to assist her husband with the operation and management of his farm and with the care of their children, and as the proximate result of the aforesaid negligence and carelessness of the defendant, her husband and children have been deprived of said pecuniary benefits and have forever lost and been deprived of her care, comfort, advice and society to their great damage in the sum of one hundred five thousand dollars (\$105,000.00).

## 10.

That by reason of the death of Mary A. O'Keefe her heirs were required to incur expense for her funeral in the reasonable sum of \$1,879.08, and thus they have sustained special damage in said sum and amount.

## 11.

That Mary A. O'Keefe was born April 17th, 1919; she was married November 15th, 1945, to Raymond O'Keefe who survives her; they have two children surviving her, to wit: Michael John Thomas O'Keefe, who was born March 12th, 1947, and Mary Jane Catharine O'Keefe, who was born April 18th, 1950; that her husband, Raymond O'Keefe, was born March 5th, 1908. That, as such administrator, the plaintiff brings and prosecutes this action as the personal representative of Mary A. O'Keefe for the benefit of the surviving widower, Raymond O'Keefe, and children, the above-named son and daughter.

## 12.

That all of said damages sustained by the aforesaid heirs, who are all of the heirs of Mary A. O'Keefe, deceased, were proximately caused by the aforesaid careless, negligent and reckless conduct, acts and omissions of the defendant, Walter Schoepski.

Wherefore, plaintiff demands judgment against the defendant for the sum One Hundred Six Thousand Eight Hundred Seventy-nine and 08/100 Dol-

lars (\$106,879.08), and for his costs in this action expended.

HARRISON AND GRANAT,  
DOEPKER & HENNESSEY,

By M. J. DOEPKER,  
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed December 12, 1955.

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[Title of District Court and Cause.]

ANSWER

For his answer to plaintiff's complaint, the defendant, Walter Schoepski, whose name is properly spelled Walter Schoepske, shows and alleges:

First Defense

That the complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

Defendant admits and denies the allegations of said complaint as follows:

1. Admits the allegations of paragraphs 1 and 2 of said complaint.

2. Admits the allegations of paragraph 3 of said complaint save and except that defendant denies any knowledge or information sufficient to form a belief as to the exact width of said highway from

shoulder to shoulder and denies that approaching traffic from the east of said bridge could not be seen by drivers from the west, at least while traffic from the east was within five hundred feet of said bridge; denies that the bridge described in plaintiff's complaint was a "narrow" bridge, if by said allegation the plaintiff intends to allege that there was less room for the passage of vehicles over said bridge than there was on the remainder of the highway either east or west from said bridge and denies that the center line of said highway was plainly marked with a white painted line, alleging the fact to be as it is that said white line was an intermittent or broken line.

3. Admits that on the 30th day of August, 1955, Mary A. O'Keefe was driving an automobile along the highway described in plaintiff's complaint at about the hour of 9:30 a.m. of said day and denies the remaining allegations in paragraph 4 of said complaint.

4. Admits the allegations of paragraph 5 of said complaint save and except that the defendant specifically denies that defendant was then and there coming over the high point to the east of said bridge at the time that Mary A. O'Keefe in her said automobile entered said bridge.

5. Denies the allegations of paragraph 6 of said complaint.

6. Denies the allegations of paragraph 7 of said complaint.

7. Denies the allegations of paragraph 8 of said complaint except what this defendant admits that Mary A. O'Keefe did sustain some serious and fatal injury at the time and place set forth in said complaint and admits that said Mary A. O'Keefe died at the place of the casualty on the 30th day of August, 1955.

8. Specifically denies that as the proximate result of any negligence and carelessness of the defendant, the husband and children of said Mary A. O'Keefe have been deprived of pecuniary benefits or that as a proximate result of any negligence or any carelessness of the defendant, they have been deprived of her care, comfort, advice and society in any sum and denies any knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 of said complaint.

9. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 10 and 11 of said complaint.

10. Denies the allegations of paragraph 12 of said complaint.

### Third Defense

That at the time and place set forth in plaintiff's complaint Mary A. O'Keefe so negligently and carelessly drove and operated the Buick automobile which she was then and there driving in an easterly direction as to cause the same to violently collide with the automobile which defendant was then driv-



ing in a general westerly direction and on defendant's own right-hand side of said highway; and, that any damages sustained by the plaintiff as the personal representative of said Mary A. O'Keefe, for the benefit of the surviving widower and children, or otherwise, at the time and place and on the occasion set forth in plaintiff's complaint were caused, or were contributed to, by the negligence, fault, and want of care on the part of Raymond O'Keefe, the owner of said Buick automobile, and on the part of said Mary A. O'Keefe, herself, and not by any negligence or fault or want of care on the part of this defendant.

### Counterclaim

For his counterclaim, the defendant, Walter Schoepske, alleges:

#### I.

Adopts by reference the allegations of paragraph 2 of plaintiff's complaint.

#### II.

That on August 30, 1955, at about 9:30 o'clock in the morning, the defendant was driving his automobile, a 1952 Pontiac, in a westerly direction on U. S. Highway No. 2 in Phillips County, Montana, and his automobile had reached a bridge located about twelve (12) miles east of Malta, Montana, over which bridge the highway passes; that at the same time, one Mary O'Keefe was driving a 1955 Buick, owned by her husband, Raymond O'Keefe, who was riding in the automobile, in an easterly

direction on said U. S. Highway No. 2, and that the automobiles collided on said bridge.

### III.

That the collision was caused by the negligence of Mary O'Keefe, who was driving the automobile for her husband, who was riding therein, and that she

1. Failed to keep a proper lookout prior to and at the place where the collision occurred;

2. Drove the Buick automobile on the wrong side of the highway;

3. Drove the Buick automobile into the Pontiac automobile, which was on its proper side of the road;

4. Drove the automobile after drinking intoxicating beverages;

5. Drove the Buick automobile at an excessive rate of speed under the circumstances.

### IV.

That as a result of the negligence of Mary O'Keefe, in causing the collision as stated above, Walter Schoepske was rendered unconscious and suffered many injuries, consisting, among other things, of (a) compound fractures of the left leg, (b) head injuries, and (c) broken ribs.

### V.

That in the reasonable treatment of his injuries, Walter Schoepske was required to employ skilled

physicians and surgeons, and he incurred obligations for such services in the amount of \$400.00 to the date of the filing of this counterclaim, and he will be required to expend large sums of money in the future for the services of physicians and surgeons in the reasonable treatment of his injuries.

## VI.

That further, in the reasonable treatment of his injuries, Walter Schoepske was hospitalized and incurred obligations for such hospital services in the amount of \$867.99 to the date of the filing of this counterclaim, and he will be required to expend large sums of money in the future, in the reasonable treatment of his injuries.

## VII.

That at the time Walter Schoepske was injured, as aforesaid, he was in reasonably good health, able-bodied, steadily and gainfully employed, and earning \$110.00 per week, and that defendant was unable to work and has lost \$3,190.00 in wages to the date of the filing of this counterclaim.

## VIII.

That as a result of his injuries, Walter Schoepske will be permanently crippled and disabled in a degree which cannot be accurately estimated at this time, and, therefore, he respectfully requests permission to amend this counterclaim, by inserting herein his loss of future earnings prior to the trial



of this cause and at a time when he can more accurately estimate them.

IX.

That Walter Schoepske has suffered, is suffering and will continue to suffer great physical pain, mental agony, anguish and humiliation by virtue of his injuries, as aforesaid, and he will permanently suffer therefrom to his general damage in the amount of \$35,000.00.

Wherefore, defendant demands:

1. That plaintiff's complaint be dismissed and plaintiff take nothing by this action.

2. That defendant have judgment against plaintiff on his counterclaim for the sum of \$39,447.99, as and for his general and special damages, and for defendant's costs and disbursements incurred in and by reason of this action.

HALL, ALEXANDER &  
BURTON,  
ANGLAND & MARRA,

By /s/ EDW. ALEXANDER,  
Of Counsel,  
Attorneys for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed May 3, 1956.

[Title of District Court and Cause.]

## REPLY

For his Reply to defendant's Counterclaim, which is designated as such in his Answer, the plaintiff admits, denies and alleges:

### First Defense

#### I.

Admits the allegations of paragraph I which was adopted from plaintiff's complaint.

#### II.

Admits the allegations of paragraph II of defendant's Counterclaim except that plaintiff denies that the 1955 Buick mentioned in said paragraph was owned by her husband, Raymond O'Keefe, and in this connection alleges that said automobile was owned by Mary A. O'Keefe.

#### III.

Denies the allegations of paragraph III of defendant's Counterclaim, save and except that plaintiff admits that the husband of Mary A. O'Keefe was riding in her automobile at the time and place of the collision.

#### IV.

Denies specifically that as a result of any negligence whatsoever of Mary O'Keefe the collision mentioned in paragraph IV was caused; admits that Walter Schoepske was injured in said collision but alleges that he does not have any knowledge, suf-

ficient to form a belief as to the nature and extent of his injuries but specifically denies that any injuries received by said Walter Schoepske were in any manner or degree caused or contributed to by any negligent or careless act or omission of the said Mary A. O'Keefe.

V.

Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph V of defendant's Counterclaim, but specifically denies that the said Walter Schoepske was required to employ or will be required to employ physicians and surgeons or incur any expense whatsoever by reason of any negligence whatsoever of the said Mary A. O'Keefe.

VI.

Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph VI of defendant's counterclaim, but specifically denies that the said Walter Schoepske was hospitalized or incurred obligations for such services by reason of any negligence whatsoever of the said Mary A. O'Keefe.

VII.

Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph VII of defendant's counterclaim, but specifically denies said Walter Schoepske was injured, damaged or lost any wages whatsoever or any earnings whatsoever by reason of any negligent act or omission whatsoever of Mary A. O'Keefe.

## VIII.

Denies any knowledge or information sufficient to form a belief as to the allegations of paragraph VIII of Defendant's Counterclaim but specifically denies that the said Walter Schoepske was, in any manner crippled, disabled or that he will lose any earnings whatsoever by reason of any negligent act or omission whatsoever of Mary A. O'Keefe.

## IX.

Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph IX of Defendant's Counterclaim and specifically denies that Walter Schoepske has suffered damage in any sum or amount whatsoever as a proximate result of any negligent act or omission or any negligence whatsoever of Mary A. O'Keefe.

## Second Defense

Plaintiff denies generally each and every allegation, matter or thing in the nature of new and/or affirmative matter, contained in the defendant, Walter Schoepske's Counterclaim, which has not been, in the foregoing First Defense specifically admitted or denied.

## Third Defense

That at the time and place described in defendant's counterclaim the defendant, Walter Schoepske, so negligently and carelessly drove and operated the 1952 Pontiac automobile which he owned along U. S. Highway No. 2 in a westerly direction with-

out keeping any lookout, without any control, and negligently and carelessly swerved his automobile from the northerly to the southerly side of the highway into collision with the automobile owned and being then and there driven by Mary A. O'Keefe who, at all times was driving her automobile on her own right-hand side of the highway and any damages sustained by the defendant at the time and place described in defendant's counterclaim were caused or were contributed to as the proximate result of the negligence, wrongful conduct, fault and carelessness of Walter Schoepske himself and not by any negligence of Mary A. O'Keefe or any of the occupants of her automobile at said time and place.

#### Fourth Defense

That defendant's counterclaim fails to state a claim against plaintiff, as Administrator of the Estate of Mary A. O'Keefe, deceased, or otherwise, upon which relief can be granted.

Wherefore, plaintiff demands judgment that defendant's Counterclaim herein be dismissed at his costs and that he take nothing thereby. That he have the relief demanded in his Complaint.

HARRISON & GRANAT,  
DOEPKER & HENNESSEY,

By /s/ M. J. DOEPKER,  
Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 24, 1956.

In the District Court of the United States for the  
District of Montana, Havre Division

Civil No. 1798

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

Civil No. 1799

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

Civil No. 1800

RAYMOND O'KEEFE,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

PLAINTIFF'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Now come the plaintiffs above named, after the  
causes named were consolidated for trial and re-



spectfully request the Court to make the following Findings of Fact and Conclusions of Law after said causes were tried to the Court, sitting without a jury:

Findings of Fact

1. At all times herein mentioned the plaintiff, Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, was and he is and continues to be the administrator of said estate and was a citizen of the State of Montana, appointed by the District Court of the Seventeenth Judicial District of the State of Montana, in and for the County of Phillips; that plaintiff Raymond O'Keefe is and has been a citizen and resident of the Dominion of Canada; that defendant, Walter Schoepski, is and has been a citizen and resident of the State of Wisconsin.

That the amount involved in each of the above-named controversies, exclusive of interest and costs, exceeds three thousand dollars.

2. That, on the 30th day of August, 1955, there was, had been and continues to be a public highway known as U. S. Highway Number 2, which ran between the cities and towns of Havre, Malta, Glasgow, Montana, and Williston, North Dakota; at the point of the collision which occurred on that day on a bridge approximately twelve miles easterly from the City of Malta and for several miles easterly and westerly therefrom the highway was a hard surfaced highway, approximately 22 feet wide with black top surfacing and shoulders running along

said black top, which black top was 19 feet wide and the surface of said bridge measured 19 feet wide between bridge timbers forming the base of bridge railings constructed along the northerly and southerly sides of said bridge and extending for an over-all length of 96 feet in an easterly and westerly direction in said highway.

3. That the highway was straight on each side of said bridge easterly and westerly for more than five hundred feet and on the said day the highway was dry and the weather was clear with visibility unlimited at and before the time of the collision; approaching said bridge from the West on said highway the bridge was visible for several hundred feet; that immediately to the East of said bridge there was a rise in the highway, followed by a depression so that vehicles approaching from the East of said bridge were invisible to drivers approaching said bridge from the West, while such vehicles were in the low part of the depression to the East of said bridge; that at the high point to the east of said bridge there was on the northerly side of said highway a warning sign on the day of the collision containing the words "narrow bridges next ten miles"; there were no other signs erected by or under the authority of the Montana State Highway Department in the immediate vicinity of said bridge directing operators of vehicles to slow down or naming a minimum or maximum speed regulation in the vicinity of said bridge on the 30th day of August, 1955; the center line of said highway was marked



by center lines in the vicinity of said bridge with no center line marking on the surface of said bridge.

4. That on the 30th day of August, 1955, Mary A. O'Keefe, an experienced driver, was driving a Buick automobile, which she owned along highway No. 2 toward said bridge; she had left Havre, Montana, at approximately 6:40 a.m. Mountain Standard Time, and drove continually to the bridge approximately 12 miles east of Malta, Montana, arriving at the bridge at approximately 9:10 a.m.; Mary O'Keefe was driving her automobile carefully, guiding it along the right-hand side of the highway and keeping a careful lookout ahead of her; her husband, Raymond O'Keefe, and their two children were riding in the automobile with her; she had her automobile under control, prior to the collision, and she entered on said bridge on the southerly half thereof and continued thereon until the collision with a Pontiac automobile approximately two-thirds across said bridge from the West; that she was rendered unconscious in said collision and said Buick automobile continued easterly, without her control, and after rubbing along the southerly side of the bridge curved around to the northerly side off the highway and over a borrow pit or ditch at the easterly end of said bridge where it stopped.

5. That on the 30th day of August, 1955, Walter Schoepski was driving a Pontiac automobile, which he owned, along said highway No. 2 toward said bridge; he had left Williston, North Dakota, before daylight and drove continuously until he arrived

at said bridge approximately two hundred ten miles from Williston, North Dakota; he observed the highway sign and learned therefrom that there were narrow bridges ahead of him; coming over the high point approximately 450 feet from the bridge he saw the bridge and a Buick automobile coming toward the bridge from the West as he came down the incline toward the bridge from the East and knew that the Buick automobile would reach the bridge before he would; there was nothing about the driving of the Buick automobile, as he came down the incline and onto the bridge which caused him any concern; he did not see the Buick automobile out of its lane of travel as it approached and the cars came into collision on the southerly half of the surface of the bridge approximately thirty-five feet from the easterly end of the bridge.

6. That, in the operation of his automobile at said time and place, the defendant, Walter Schoepski, was guilty of the following acts and omissions of negligence:

a. He operated and drove his automobile without keeping a proper lookout as he approached and came to the place of the collision.

b. He negligently, carelessly and recklessly failed and omitted to observe where he was driving as he approached and collided with the Buick automobile.

c. He negligently and carelessly permitted his automobile to be violently propelled into and against

the Buick automobile and completely failed to have and keep the Pontiac automobile under control.

d. Observing that said bridge was narrow and that the Buick automobile would enter onto said bridge before he would, he negligently failed to use caution or circumspection in the operation of his Pontiac automobile at said time and place by yielding time to the operator of the Buick automobile to pass over said bridge, before entering thereon, or by exercising due care and caution in driving upon said bridge, after the Buick automobile had entered thereon, so as to see and know that he was safely on his own lane of traffic so as to avoid the danger of driving into collision with said Buick automobile.

e. Suddenly and without warning the defendant negligently and carelessly drove and swerved the Pontiac automobile from the northerly to the southerly side of the highway directly into the path of the Buick automobile as it was approaching on its own or southerly half of the surface of said bridge and crashed the left front end of the Pontiac automobile into the left front end and side of the Buick automobile.

7. That the Buick automobile involved in the collision, prior to the impact, measured 206.7 inches in length over all and was  $76\frac{1}{4}$  inches in width; the Pontiac automobile was  $202\frac{1}{2}$  inches in length over all and was  $75\frac{11}{16}$  inches in width.

12. That immediately before said collision, Mary A. O'Keefe was in good health and uninjured, and would have, with reasonable probability, but for her injuries there sustained, continued to live out her life expectancy, during which time her husband and children would have received pecuniary benefits from her all during her continued life and she had been and would have continued to be, during the remainder of her life, a devoted wife to her husband and a devoted mother to her children; she was a graduate pharmacist and an experienced farm wife and, but for her death, she would have continued to assist her husband with the operation and management of his farms and with the care of their children and as the proximate result of the aforesaid negligence and carelessness of the defendant, her husband and children have been and will be deprived of all of said pecuniary benefits and they have forever lost and been deprived of her care, comfort, advice and society to their great damage in the sum of one hundred and five thousand (\$105,000.00) Dollars.

13. That by reason of the death of Mary A. O'Keefe, Raymond O'Keefe has been required to expend for her funeral the reasonable sum of \$1,229.29 and thereby have sustained further damage in said sum and amount.

14. That by reason of the personal injuries sustained by Raymond O'Keefe he was required to expend the reasonable sum of \$362.50 for medical

treatment X-rays and hospitalization and he personally has been damaged in said additional sum.

15. That on the 30th day of August, 1955, after said collision, Mary A. O'Keefe survived her injuries and lived for at least twenty minutes before her death on said day and she suffered excruciating pain from her injuries for a few minutes and Mary O'Keefe was earning and was capable of earning the sum of five thousand dollars per year as a housewife and assisting in the operation of farms with her husband and as a graduate pharmacist, from which earnings she had and would have continued to have, for her own use and benefit, aside from her pecuniary expenses and contributions to her husband and children at least the sum of twelve hundred fifty dollars per year but as the proximate result of the aforesaid negligence of the defendant, said Mary O'Keefe was deprived of a long, useful and happy life and the fruits of her labor to her great damage in the sum of thirty-one thousand two hundred sixty dollars. That Mary A. O'Keefe could not, in her lifetime, bring an action for damages for her injuries and her administrator, Stephen Granat, as her personal representative, prosecuted the action on her behalf.

16. That in the operation of her Buick automobile, while approaching the bridge on the highway and while entering upon said bridge, she used ordinary care and prudence and drove on her own side of the highway at a reasonable speed and in a careful and prudent manner taking into account that the



highway was at least 19 feet wide, dry and straight on each side of said bridge and that the weather was clear and sunny and the surface of said bridge was of the same width as the black top, or 19 feet and there were no "slow" or other warning signs on her side of said bridge to the west for at least ten miles and that Mary A. O'Keefe had never passed over said highway before the 30th day of August, 1955; that her Buick automobile was new and in excellent condition and she was in good physical condition and capable of driving her automobile at said time and place, and was alert and watchful as she came onto said bridge, guiding her automobile on the right-hand or southerly side of said bridge until the instant of the collision.

17. The Court finds the facts generally in favor of the plaintiffs in the three consolidated causes, being Civil No. 1798, Civil Number 1799 and Civil No. 1800, and against the defendant in said causes.

18. The defendant, Walter Schoepske, sustained serious injuries in said collision, was hospitalized, incurred expense for the services of physicians and surgeons and lost wages because of his injuries but said injuries and damages were and are the proximate result of the said defendant's own negligence as are mentioned and described in Finding Number 6 and were not caused nor contributed to by Mary A. O'Keefe in any manner by careless or reckless conduct on her part or as the result of any negligence in her driving of the Buick automobile involved which she owned.

From the Foregoing Findings of Fact, the Court  
Makes the Following Conclusions of Law:

I.

That this Court has jurisdiction of each and all of the consolidated cases and the parties to the actions.

II.

That, Stephen Granat, as Administrator of the estate of Mary A. O'Keefe, Deceased, in Cause No. 1798, is entitled to recover judgment against the defendant, Walter Schoepske, for the sum of one hundred and five thousand (\$105,000.00) Dollars and the further sum of one thousand two hundred twenty-nine and 29/100 (\$1,229.29) Dollars and for his costs of suit.

III.

That, Stephen Granat, as Administrator of the estate of Mary A. O'Keefe, deceased, in Cause No. 1799, is entitled to recover judgment against the defendant, Walter Schoepske, for the sum of thirty-one thousand two hundred and sixty (\$31,260.00) dollars and for his cost of suit.

IV.

That Raymond O'Keefe, in Cause No. 1800, is entitled to recover judgment against the defendant, Walter Schoepske, for the sum of thirty-two thousand five hundred (\$32,500.00) dollars and for his costs of suit.

V.

That defendant, Walter Schoepske's, respective Counterclaims should each and all be dismissed.

Let Judgment Be Entered in Accordance Here-  
with.

Done this . . . . day of . . . . ., 1957.

.....,

United States Judge.

The foregoing Proposed Findings of Fact and  
Conclusions of Law are hereby submitted this 22nd  
day of April, 1957.

STEPHEN GRANAT,  
DOEPKER & HENNESSEY,

By /s/ M. J. DOEPKER,  
Attorneys for Plaintiffs.

[Endorsed]: Filed April 22, 1957.

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[Title of District Court and Cause.]

Nos. 1798, 1799, and 1800

DEFENDANT AND CROSS-COMPLAINANTS'  
PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Comes now the defendant and cross-complainant  
named in the three consolidated causes above and  
respectfully requests this Court to make the follow-  
ing Findings of Fact and Conclusions of Law:

The three causes above named were tried to this  
Court without a jury and the Court having con-  
sidered the briefs submitted by counsel and having



considered the pleadings, records, and the competent evidence herein and being fully advised, found issues of law and fact in favor of the defendant and cross-complainant, Walter Schoepske, and against the plaintiff, Stephen Granat, as administrator of the estate of Mary A. O'Keefe in Civil Actions Numbered 1798 and 1799, and against the plaintiff, Raymond O'Keefe, in Civil Action Numbered 1800.

The Court now makes the following Findings of Fact and Conclusions of Law:

#### Findings of Fact

The Court finds that:

1. That this Court has jurisdiction in the above three causes on the ground of diversity of citizenship and on the ground that the amount involved in the controversy, exclusive of interest and costs, was and is in excess of Three Thousand and no/100ths Dollars (\$3,000.00).

2. That the plaintiffs in each of the three consolidated causes have failed to prove by a preponderance of the evidence that the injury or damages alleged in any of the complaints were proximately caused by any negligence on the part of the defendant, Walter Schoepske.

3. That on August 30, 1955, at about 9:30 a.m., the defendant and cross-complainant herein was driving his automobile in a westerly direction on U. S. Highway No. 2, in Phillips County, Montana,

and his automobile had reached a bridge located about twelve (12) miles east of Malta, Montana, over which bridge the highway passed. That at the same time, one Mary A. O'Keefe was driving her automobile in an easterly direction on said highway No. 2 and that the automobiles collided on said bridge. That there were warning signs bearing the legend "Narrow Bridges" both to the east and to the west of the bridge so that both the defendant-cross-complainant and Mary A. O'Keefe had the opportunity to observe them and be apprised.

That the bridge was of sufficient width for the automobiles to pass each other safely.

That the defendant-cross-complainant was operating his automobile on said bridge and in approaching said bridge in a careful and prudent manner;

That the defendant-cross-complainant was on his own side of the road.

That the defendant-cross-complainant was driving his automobile immediately prior to going upon said bridge at a rate of speed of about forty (40) miles per hour and that he reduced his speed upon entering said bridge to about thirty-five miles per hour.

That Mary O'Keefe was driving her automobile immediately prior to and upon said bridge at a rate of speed between sixty (60) and sixty-five (65) miles per hour, which speed was excessive under the conditions then and there existing.

That Mary O'Keefe failed to reduce her speed upon said bridge to an appropriate rate of speed under the conditions then and there existing.

That Mary O'Keefe drove her automobile on the wrong side of the highway and into the automobile owned and driven by the defendant-cross-complainant.

4. That Walter Schoepske, the defendant and cross-complainant herein, suffered severe injuries and was damaged by reason of the negligence of the said Mary A. O'Keefe.

5. That as a result of the negligent actions of the said Mary A. O'Keefe, the defendant and cross-complainant herein, has been damaged in the sum of .....

That from the foregoing facts the Court draws the following:

#### Conclusions of Law

1. The Court has jurisdiction of the parties and the subject matter herein.

2. That in causes of action 1798 and 1799 the plaintiff Stephen Granat as administrator of the estate of Mary A. O'Keefe, deceased, take nothing and that in cause No. 1800, the plaintiff, Raymond O'Keefe, take nothing.

3. That the injuries to Walter Schoepske, the defendant and cross-complainant herein, were sus-

tained by him as a direct and proximate result of the negligence of Mary A. O'Keefe.

4. That Walter Schoepske, the defendant and cross-complainant herein, has been damaged by the said Mary A. O'Keefe's negligence in the sum of \$35,000, and that he is entitled to judgment, therefore, against Stephen Granat, as administrator of the estate of Mary A. O'Keefe, deceased, the plaintiff, in the amount of . . . . ., together with the costs necessarily incurred herein.

Let Judgment Be Entered in Accordance Herein.

Done this . . . . day of . . . . ., 1957.

. . . . .,  
United States Judge.

The foregoing proposed Findings of Fact and Conclusions of Law are submitted this . . . . day of June, 1957.

H. CLEVELAND HALL,  
EDWARD C. ALEXANDER,  
JOHN H. KUENNING,  
EMMETT C. ANGLAND,  
JOSEPH R. MARRA,

By /s/ EDW. C. ALEXANDER,

/s/ JOSEPH R. MARRA,

Attorneys for Defendant and  
Cross-Complainant.

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above causes were consolidated and came on regularly for trial before the Court, sitting without a jury, on the 25th day of October, 1956; the plaintiffs were present in court and represented by their counsel James T. Harrison, Esq., of Malta, Montana, and M. J. Doepker, Esq., of Butte, Montana; and the defendant was present in person and represented by his counsel Edward C. Alexander, Esq., Emmett C. Angland, Esq., and Joseph R. Marra, Esq., all of Great Falls, Montana; thereupon oral and documentary evidence was introduced by and on behalf of each of the parties, and thereafter and on the 29th day of October, 1956, further trial of the cause was continued, and on January 14, 1957, additional evidence was introduced on behalf of the parties, and at the close of all of the evidence the parties rested and thereafter, within the time granted by the Court, each of the parties filed their briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for its consideration and decision, and the Court having considered all of the evidence and testimony submitted at the trial of the cause, and the briefs of counsel, and being fully advised in the premises, now makes and orders filed



its Findings of Fact and Conclusions of Law as follows:

### Findings of Fact

#### I.

That the plaintiff Stephen Granat is a citizen and resident of the State of Montana; that said plaintiff's intestate, Mary A. O'Keefe, was, at the time of the accident herein involved, a citizen and resident of the Province of Ontario, Canada; that the plaintiff Raymond A. O'Keefe is a citizen and resident of the Province of Ontario, Canada; that the defendant Walter Schoepski is a citizen and resident of the State of Wisconsin; that the matter in controversy in this cause, exclusive of interest and costs, exceeds the sum of \$3,000.00.

#### II.

That the plaintiffs in each of the three consolidated causes have failed to prove by a preponderance of the evidence that the injury or damages alleged in each and all of their complaints were proximately caused by any negligence on the part of the defendant Walter Schoepski.

#### III.

That on August 30, 1955, at about 9:30 a.m., the defendant and cross-complainant herein was driving his automobile in a westerly direction on U. S. Highway No. 2, in Phillips County, Montana, and his automobile had reached a bridge located about twelve miles east of Malta, Montana, over which

bridge the highway passed. That at the same time, one Mary A. O'Keefe was driving her automobile in an easterly direction on said Highway No. 2 and that the automobiles collided on said bridge. That there were warning signs bearing the legend "Narrow Bridge" both to the east and to the west of the bridge so that both the defendant and cross-complainant and Mary A. O'Keefe had the opportunity to observe them and be apprised; that the bridge was of sufficient width for the automobiles to pass each other safely; that the defendant and cross-complainant was operating his automobile on said bridge at the time of the collision aforesaid in a careful and prudent manner and on his own side of the road; that the said Mary A. O'Keefe, in operating her automobile upon said bridge, negligently crossed over the center line and her said automobile collided with the automobile owned and driven by the defendant and cross-complainant; that the proximate cause of said collision was the negligence of said Mary A. O'Keefe in crossing over the center line of said highway and into the lane of travel of said defendant and cross-complainant.

#### IV.

That at the time of trial, said Walter Schoepski was a man of the age of 60 years, and that he had a normal life expectancy of 14.5 years.

#### V.

That as a result of said collision, said defendant and cross-complainant received the following injuries; severe surgical shock, laceration of the



forehead which required suturing, numerous bruises, cuts and lacerations, some of which would ordinarily have required suturing, but which was not done because of the patient's condition at the time would not permit it; severe displaced comminuted fracture of the left femur; fractures of the fifth, sixth, seventh, eighth and tenth ribs on the left side of the chest, with damage to the left lung. That upon his admission to the hospital at Malta, Montana, on August 30, 1955, as a result of said injuries, the condition of said defendant and cross-complainant was very critical for at least four hours; that the fracture of the left femur required open reduction by surgery and the application of a metal plate with screws to hold the bone fragments in place, but because of the severity of the chest injury such operation could not be undertaken until September 15, 1955; that said defendant and cross-complainant remained in the hospital at Malta, Montana, for approximately seven weeks; that he left the hospital in Malta, Montana, after seven weeks with his leg in a cast and on a stretcher and was more or less confined to home until March, 1956; that he could walk only with the aid of crutches until February, 1956, and then required, and still requires the aid of a cane to walk. That as a result of said accident and injuries said defendant and cross-complainant suffers from a nervous condition. That as a permanent result of said injuries defendant and cross-complainant suffers a scar on his forehead and one on his left hand, a bowing of the femur bone of the left leg and shorten-

ing of the leg with a limitation of motion which causes him to walk with a limp and require the assistance of a cane, and a general weakness of said leg. As a result of said injuries said defendant and cross-complainant suffered severe pain and discomfort which required, during his entire stay in the hospital, sedatives and narcotics for the relief thereof, and that thereafter he suffered and will in the future continue to suffer pain and discomfort in a lesser degree. That all of said injuries were proximately caused by the negligence of said Mary A. O'Keefe, and resulted in damage to defendant and cross-complainant in the sum of thirty-five thousand (\$35,000) dollars.

## VI.

As a result of said accident, said defendant and cross-complainant was required to pay and did pay the following hospital and medical expenses for treatment of his said injuries:

Malta Hospital, Malta, Montana . . . . .	\$ 867.99
Doctor Wiprud, Malta, Montana . . . . .	375.00
X-rays, Beloit, Wisconsin . . . . .	22.50
Cast removal, Beloit, Wisconsin . . . . .	3.00
Dr. Cochrane, Beloit, Wisconsin . . . . .	6.00

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Total . . . . . \$1,274.49

That all of said charges were reasonable charges for the service rendered.

## VII.

At the time of said accident defendant and cross-complainant was a skilled boring machine operator,

capable of earning and earning the sum of \$125.00 per week. By reason of the injuries received in said accident, he was unable to work from August 30, 1955, to March 19, 1956, a period of approximately 28 weeks, and thereby suffered loss of wages in the sum of \$3,500.00. Upon returning to work on March 19, 1956, defendant and cross-complainant, because of the effects of said injuries, and particularly the injury to his left leg, was unable to return to his job as a machine operator, but had to accept a less demanding job at the lower rate of pay of \$96.25 per week, and he will in the future be unable to return to his job as a machine operator because of the permanent injury to his left leg. That between March 19, 1956, and October 25, 1956, the date of trial, a period of approximately 31 weeks, by virtue of the lower rate of pay, defendant and cross-complainant suffered a loss of wages in the sum of \$891.25. That defendant and cross-complainant had worked for the same company for 14 years as a machine operator, and prior to his injuries was reasonably certain to have continued working for the company in the same capacity until he reached the retirement age of 65; that since his injuries defendant and cross-complainant is likewise reasonably certain to continue working for the same company until he reaches 65 years of age, but at the reduced pay of \$96.25 per week; that there was no evidence produced at the trial as to defendant and cross-complainant's birthdate, but as he was 60 years of age at the time of trial, there will be at least four years until he reaches his 65th birthday, and that

during said four years it is reasonably certain that he will suffer \$1,495.00 per year loss of earnings by virtue of his reduced earning capacity; that the present value of \$1,495.00 per year for a four-year period is \$5,556.92.

From the foregoing Findings of Fact the Court draws the following:

### Conclusions of Law

#### I.

That the Court has jurisdiction of the parties and the subject matter herein.

#### II.

That in causes of action 1798 and 1799 the plaintiff Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, take nothing and that in Cause No. 1800 the plaintiff Raymond O'Keefe take nothing.

#### III.

That the injuries to Walter Schoepski, the defendant and cross-complainant herein, were sustained by him as a direct and proximate result of the negligence of Mary A. O'Keefe.

#### IV.

That Walter Schoepski, the defendant and cross-complainant herein, has been damaged by the said Mary A. O'Keefe's negligence in the sum of Thirty-five Thousand and no/100ths (\$35,000) Dollars general damages and Eleven Thousand Two Hundred

Twenty-two and 66/100ths (\$11,222.66) Dollars special damages, and that he is entitled to judgment, therefore, against Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, the plaintiff, in the sum of Forty-six Thousand Two Hundred Twenty-two and 66/100ths (\$46,222.66) Dollars, together with costs necessarily incurred herein.

V.

Proof of the special damages found in the Findings of Fact having been received without objection, the counterclaims of Walter Schoepski, in Causes 1798 and 1799, are deemed amended to conform to the proof pursuant to Rule 15(b), Federal Rules of Civil Procedure, and the relief to which defendant and cross-complainant is entitled under such proof has been granted pursuant to Rule 54(c), Federal Rules of Civil Procedure.

Counsel for the said defendant and cross-complainant are ordered to prepare, submit to counsel for plaintiff for approval as to form, and present to the Court for signature, a form of judgment in conformity with the foregoing Findings of Fact and Conclusions of Law within 10 days from date of receipt of a copy of said Findings of Fact and Conclusions of Law.

Dated this 9th day of August, 1957.

/s/ W. D. MURRAY.

[Endorsed]: Filed August 9, 1957.



In the United States District Court for the District  
of Montana, Havre Division

Nos. 1798, 1799 and 1800

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

RAYMOND O'KEEFE,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

### JUDGMENT

The above causes were consolidated and came on regularly for trial before the Court, sitting without a jury, on the 25th day of October, 1956; the plaintiffs were present in Court and represented by their counsel, James T. Harrison, Esq., of Malta, Montana, and M. J. Doepker, Esq., of Butte, Montana;

and the defendant was present in person and represented by his counsel, Edward C. Alexander, Esq., Emmett C. Angland, Esq., and Joseph R. Marra, Esq., all of Great Falls, Montana; thereupon oral and documentary evidence was introduced by and on behalf of each of the parties, and thereafter and on the 29th day of October, 1956, further trial of the cause was continued, and on January 14, 1957, additional evidence was introduced on behalf of the parties, and at the close of all of the evidence the parties rested and thereafter, within the time granted by the Court, each of the parties filed their briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for its consideration and decision; thereafter on the 9th day of August, 1957, the Court filed herein its Findings of Fact and Conclusions of Law to which documents now on file, reference is hereby made as if the same were set out herein in exact words and figures. The Court in said documents found that the defendant and cross-complainant, Walter Schoepski, has been damaged by the negligence of Mary A. O'Keefe in the sum of \$46,222.66 and that judgment should be entered for such sum and costs in favor of the defendant and cross-complainant against the plaintiff, Stephen Granat as Administrator of the Estate of Mary A. O'Keefe, deceased, and the Court in said documents found that the plaintiff, Raymond O'Keefe take nothing against the defendant in Cause No. 1800 above referred to.



Wherefore, It Is Hereby Ordered, Adjudged and Decreed that the defendant and cross-complainant have and recover of and from the plaintiff, Stephen Granat as Administrator of the Estate of Mary A. O'Keefe, in Causes No. 1798 and 1799, the sum of \$46,222.66; together with defendant and cross-complainant's costs herein taxed at the sum of \$452.36 and that such judgment bear interest at the rate of six per cent per annum from date hereof until paid, and

It Is Further Ordered, Adjudged and Decreed that judgment be entered in favor of the defendant and cross-complainant and against the plaintiff in Cause No. 1800, and that plaintiff take nothing by his Complaints in Causes Nos. 1798 and 1799.

Dated this 19th day of August, 1957.

/s/ W. D. MURRAY,  
Judge.

The foregoing draft of Judgment is hereby approved, as to form.

/s/ STEPHEN GRANAT,  
DOEPKER & HENNESSEY,

By /s/ M. J. DOEPKER,  
Attorneys for Plaintiffs.

[Endorsed]: Filed and entered August 19, 1957.

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

MOTION FOR AMENDMENT OF FINDINGS  
AND FOR MAKING ADDITIONAL FIND-  
INGS OF FACT AND CONCLUSIONS OF  
LAW

The plaintiffs in the above causes, in accordance with the provisions of Rule 52-B of the Federal Rules of Civil Procedure, moves that the findings of fact heretofore entered herein, be amended and additional findings made in the following particulars:

Strike from finding of fact III, the following:

“\* \* \* that the defendant and cross-complainant was operating his automobile on said bridge at the time of the collision aforesaid in a careful and prudent manner and on his own side of the road; that the said Mary A. O’Keefe, in operating her automobile upon said bridge, negligently crossed over the center line and her said automobile collided with the automobile owned and driven by the defendant and cross-complainant; that the proximate cause of said collision was the negligence of said Mary A. O’Keefe in crossing over the center line of said highway and into the lane of travel of said defendant and cross-complainant.”

To strike from said findings of fact, paragraphs IV, V, VI and VII.

That in place of the stricken matter, the Court find as follows:

That the bridge in question was 19 feet in width on the travelled portion thereof; that the Buick automobile was a red painted automobile and the width of the Buick automobile was  $76\frac{1}{4}$  inches; that the length of the Buick automobile was 206.7 inches, overall; that the width of the Pontiac automobile was  $75\text{--}11\frac{11}{16}$  inches and the length of said Pontiac automobile was  $202\frac{1}{2}$  inches, overall.

That red paint from the Buick automobile was lightly deposited on the south railings of the bridge, beginning at a point 24'8" from the west end of the bridge, a piece 2'10" long; a second scraping of red paint from the Buick was 14'1" from the first scrape and a third large scraping was 19'6", indicating that the Buick automobile was travelling throughout the bridge on its own south side of the bridge.

That in said collision, which occurred approximately 42 feet from the easterly end of said bridge, the automobiles collided and came together at approximately the left front ends of each automobile.

That in said collision, a portion of the Buick automobile was crushed downward so that it made a gouge mark on the surface of the bridge at a point directly opposite the front end of the Pontiac Automobile, as it came to rest after the collision, so that the left front of the Pontiac automobile, after the collision, was 6 feet from the bridge railing and the right front was 6'10" from the bridge

railing; that said collision took place not to exceed 2 feet from said gouge mark on the south half of the bridge; that all physical evidence indicated that the post collision debris from the Buick was south of the center line and west of the point of impact; the post collision debris from the Pontiac was underneath and to the east of the Pontiac in its position after the collision; that there was no evidence upon the surface of the bridge westerly from the point of the collision in the matter of post collision debris, or other credible physical or other evidence of the collision occurring on the north half of the bridge.

That in said collision, the Pontiac automobile was pushed backward and upward; that prior to the moment of impact the Pontiac automobile crossed over the imaginary center line of the bridge and into the path of the Buick automobile; and that the collision occurred at a point on said bridge south of the imaginary center line thereof.

That the defendant Walter Schoepski, seated in his Pontiac automobile, observed the Buick automobile approaching and did not see the Buick automobile leave its lane of travel on the south side of the bridge.

Plaintiffs move to strike the said findings of fact and conclusions of law of the Court and substitute in place thereof, plaintiffs' proposed findings of fact and conclusions of law heretofore filed in this cause.

Dated this 28th day of August, 1957.

/s/ M. J. DOEPKER,

/s/ STEPHEN GRANAT,

Attorneys for Plaintiffs.

Service of Copy acknowledged.

[Endorsed]: Filed August 29, 1957.

---

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

### MOTION FOR A NEW TRIAL

Now comes the plaintiffs in the above-consolidated causes, and each thereof, and moves the Court to grant them a new trial of said actions and to set aside the Judgment rendered and entered in said cause, on the 19th day of August, 1957, on the following grounds and for the following reasons:

#### I.

That the Court's findings heretofore sought to be stricken in plaintiffs' motion to amend said findings, were each and all against the evidence.

#### II.

That said findings are each and all against the law.

#### III.

That the Court erred in finding that Mary O'Keefe crossed over the center line of said bridge with her automobile, because there is no evidence in the case to support such finding and all physical

facts are contrary to such finding, as appears from the evidence in this case.

IV.

That the Court erred in not finding that the defendant, Walter Schoepski, negligently crossed over the center line of said bridge directly into the path of the Buick automobile driven by Mary A. O'Keefe, because all physical evidence demonstrates that such occurred.

V.

The Court erred in refusing the plaintiffs to testify in said cause concerning the condition of the highway to the east end of the bridge.

VI.

That the plaintiffs have newly discovered evidence, material to this cause, which could not, with reasonable diligence, be discovered in time to produce such evidence at the trial of the cause.

VII.

The Court erred in entering Judgment for the defendant.

Dated this 28th day of August, 1957.

/s/ M. J. DOEPKER,

/s/ STEPHEN GRANAT,

By /s/ M. J. DOEPKER,

Attorneys for Plaintiffs.

Service of Copy acknowledged.

[Endorsed]: Filed August 29, 1957.



[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

### ORDER

Plaintiffs in the above-entitled causes, which were consolidated for trial, have filed motions for amendment of findings, and for making additional findings of fact and conclusions of law and motions for a new trial, the said motions for a new trial being supported by affidavits filed with said motions, and all of the motions having come on for hearing before the Court on the 18th day of March, 1958, they were submitted to the Court for its consideration and decision, and the Court having considered all of said motions, the affidavits and the arguments, and being fully advised in the premises,

The Court has studied the brief of plaintiffs and read again the pertinent parts of the transcript and is still not able to see or understand any reason why it should change the findings of fact heretofore made in the cases.

Counsel for plaintiffs whole argument is based upon an assumption that the car driven by Mary O'Keefe was at all times on its own side of the road of the bridge and then builds up his argument on the further assumption that the physical facts at the time of impact of the automobiles and immediately thereafter were as he argues them to be.

This argument of plaintiffs is fallacious in at least two respects. Counsel's argument assumes that



the position of the Pontiac automobile driven by Mr. Schoepski came to rest in exactly the same position as demonstrated by measurements of Mr. Hardesty and photographs taken some time after the accident. It is pointed out that this testimony is not entirely reliable because of the time lapse and because of other evidence with reference to the moving of the automobile and parts thereof.

Counsel's further argument, that assuming that the O'Keefe car was at all times on its proper side of the road of the bridge, that the physical facts are compatible with such assumption and therefore the position of the O'Keefe car is proved, is likewise fallacious. The Court has not given credence to the testimony of Raymond O'Keefe, and plaintiffs' own proof demonstrates that the physical facts assumed by plaintiff are likewise compatible with a finding that the O'Keefe car struck the Schoepski car on the north side of the imaginary center line of the road of the bridge which was the proper and fixed right-of-way for the Schoepski car.

The Court has accepted the testimony of the witnesses West and Keough with reference to the position of the Schoepski car prior to and at the time of impact and the physical facts do not weaken or destroy the testimony of those witnesses. The Court has found that the Schoepski car was at all times prior to impact on its proper side of the road. The O'Keefe car then necessarily was on the wrong side of the road at impact. All other facts proved in the case are compatible with such findings. The

affidavit submitted plaintiffs in support of their motions for new trial do not move the Court.

The first affidavit, that of V. P. Mauritsen, is no attack upon the truth and veracity of the witness West.

The affidavit of Katherine L. Johnson is that of a person who has been admittedly engaged in bitter litigation against witness West.

The affidavit of Charles H. McChesney is with reference to the relative positions of the automobiles of the witness West and the witness Mrs. Keough as they were parked near the scene of the accident. More specifically the affidavit is to the effect that the Keough car was parked at the place where West said his car was parked. There is some controversy and confusion in all of the testimony with reference to the exact location of the cars as they were parked following the accident, but this does not in any way destroy or weaken the testimony of Mrs. Keough or Pat West and therefore could not change the results of the cases.

The final affidavit is that of M. J. Doepker, counsel for plaintiffs, merely to the effect that he procured the affidavits with reference to the witness West when he learned sometime in the month of June, 1957, that the witness West was not a person of truth and integrity. As heretofore pointed out, the affidavits with reference to West are in the case of Mauritsen insufficient and in the case of Mrs. Johnson obviously that of a biased and prejudiced person.

None of the grounds stated in the affidavits or arguments and brief of the plaintiffs are sufficient to warrant the Court to order a new trial.

It Is Therefore Ordered and Adjudged that the motions of plaintiffs for amendment of findings and for making additional findings of fact and conclusions of law and the motions for a new trial are and each of them is denied.

Done and dated this 19th day of March, 1958.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed March 19, 1958.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Comes now the plaintiff, Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, and hereby gives notice, that said Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from that certain judgment entered in favor of the Defendant and against the Plaintiff on August 19, 1957, after Motion for New Trial and Amendment of Findings denied by the final judgment of said District Court signed and filed March 19, 1958, and entered in this action on March 19, 1958.

Dated this 18th day of April, 1958.

STEPHEN GRANAT,

Attorney-at-Law;

DOEPKER & HENNESSEY,

By /s/ MAURICE F. HENNESSEY,

Attorneys for Plaintiff.

[Endorsed]: Filed April 18, 1958.

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[Title of District Court and Cause.]

No. 1798

BOND ON APPEAL TO UNITED STATES  
COURT OF APPEALS FOR NINTH CIR-  
CUIT

Know All Men by These Presents:

That the undersigned Surety is held and firmly bound unto Walter Schoepski, the Defendant above named, in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Walter Schoepski, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents. Sealed with the Corporate Seal of said Surety Company this 18th day of April, 1958.

Whereas lately in the United States District Court for the District of Montana, Havre Division, in a suit pending in said Court between Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, Plaintiff, and Walter Schoepski,

Defendant, judgment was rendered in favor of the Defendant and against the Plaintiff and the said Plaintiff, Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, has taken an appeal to the United States Court of Appeals for the Ninth Circuit, to reverse the said judgment.

Now, the condition of the above obligation is such that if the said Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, deceased, Plaintiff above named, shall prosecute said appeal to effect and answer all damages and costs if he fail to make good the said appeal, then the above obligation to be void, else to remain in full force and virtue.

Signed with the seal of said Surety impressed, with the signature of its proper officer and attorney in this behalf authorized, this 18th day of April, 1958.

[Seal] UNITED STATES FIDELITY AND  
GUARANTY COMPANY,

A Bonding Corporation, as  
Surety.

By /s/ DON L. ENGLEKING,  
Attorney-in-Fact, Its Duly  
Authorized Officer.

Countersigned:

EXCELSIOR INSURANCE  
AGENCY,

By /s/ DON L. ENGLEKING,  
Montana Licensed Agent.

[Endorsed]: Filed April 18, 1958.



[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800.

### ORDER

Plaintiffs and appellants in each of the above-entitled causes having petitioned the Court for additional time to prepare, file and serve the designation of portions of record on appeal, and it appearing to be a proper case therefore

It is ordered that each of the above-named plaintiffs and appellants and they are hereby granted additional time to and including July 10th, 1958, in which to prepare, file and serve the designations of portions of record on appeal to be designated by each of them.

Dated this 26th day of May, 1958.

/s/ W. D. MURRAY,  
Judge.

[Endorsed]: Filed May 26, 1958.

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[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

### MINUTE ENTRIES

THURSDAY, OCTOBER 25, 1956

Present: Honorable W. D. Murray, Judge.

The above-entitled causes came on regularly for trial this day, Mr. Mark J. Doepker and Mr. James



T. Harrison being present and appearing for the plaintiffs, and Mr. Edward C. Alexander, Mr. Emmett C. Angland and Mr. Joseph R. Marra being present and appearing for the defendant.

Thereupon counsel for respective parties stipulated that the three causes may be consolidated for trial at this time, and said causes thereupon were ordered consolidated for trial.

Thereupon it was stipulated by the Court and counsel for respective parties that the trial of the causes will proceed with the taking of testimony and evidence, and that the Court will thereafter set a session so that the witness not now available for the defendant may appear and testify at a later date, and that after such witness testifies counsel for plaintiff can present rebuttal testimony orally or by deposition.

Thereupon Raymond O'Keefe was sworn and examined as a witness for plaintiffs, and a photograph, marked Plaintiffs' Exhibit No. 1, was offered and received in evidence without objection, and a Citation, marked Plaintiffs' Exhibit No. 2, and a photograph, marked Plaintiffs' Exhibit No. 3, were offered by plaintiff, to which offer the defendant objected and the objection of defendant thereupon sustained, and such offered exhibits were thereupon not received in evidence.

Thereupon Cleo E. Coles was sworn and examined as a witness for the plaintiffs, a group of 15 photo-

graphs were marked Plaintiffs' Exhibit No. 4, a document classed as a legend pertaining to the 15 photographs composing, Plaintiffs' Exhibit No. 4, was marked Plaintiffs' Exhibit No. 5, and two photographs were marked Plaintiffs' Exhibits Nos. 6 and 7, respectively, whereupon said Exhibits numbered Plaintiffs' 4, 5, 6 and 7, respectively were offered, and received in evidence without objection.

Thereupon three colored stereoscopic pictures were marked Plaintiffs' Exhibits Nos. 8, 9 and 10, respectively, were offered by the plaintiffs, to which offer the defendant objected and said objections thereupon sustained and said offered exhibits were thereupon not received in evidence.

Thereupon six photographs were marked Plaintiffs' Exhibits Nos. 11, 12, 13, 14, 15 and 16, respectively, and ten colored stereoscopic pictures were marked Plaintiffs' Exhibits Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, respectively, for identification.

Thereupon Vern Kapphan was sworn and examined as a witness for the plaintiffs, and Raymond O'Keefe was recalled and examined as a witness for plaintiffs, and a receipted statement, marked Plaintiffs' Exhibit No. 27, was offered, and received in evidence without objection, and an automobile purchase order, marked Plaintiffs' Exhibit No. 28, was offered in evidence by the plaintiff, to which offer the defendant objected, and ruling on said objection was reserved by the Court, whereupon fur-

ther trial of the causes was ordered continued until 10:00 a.m. tomorrow.

Entered in open Court October 25, 1956.

E. WARREN TOOLE,  
Clerk.

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[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

MINUTE ENTRIES  
FRIDAY, OCTOBER 26, 1956

Present: Honorable W. D. Murray, Judge.

Counsel for respective parties present as before and trial of cause resumed.

Thereupon Raymond O'Keefe resumed the witness stand for plaintiffs, whereupon the deposition of Raymond O'Keefe was opened and filed, and the stipulation accompanying said deposition, for the taking of the deposition of Raymond O'Keefe, was also filed.

Thereupon Raymond Charles Hoynes, Phillip Vert and Dr. Robert M. Wiprud were sworn and examined as witnesses for plaintiffs, and an X-ray photo, marked Plaintiffs' Exhibit No. 29, was offered and received in evidence without objection, whereupon the witnesses Hoynes and Vert were permanently excused.

Thereupon Dr. Robert M. Wiprud was called out of order as a witness for defendant for the purpose of examination in connection with defendant's counterclaim, and Defendant's Exhibits Nos. 30, 31 and 32, being three X-ray photos, were offered and received in evidence without objection, whereupon Dr. Wiprud was permanently excused as a witness herein.

Thereupon Charles H. McChesney and Gene Seal were sworn and examined as witnesses for plaintiffs, and Plaintiffs' Exhibits Nos. 11, 12, 13, 14, 15, 16, heretofore marked, and Nos. 9 and 10, heretofore marked, were now offered, and received in evidence without objection.

Thereupon Wayne Long was sworn and examined as a witness for the plaintiffs, and Plaintiffs' Exhibit No. 8, heretofore marked, was now offered, and received in evidence without objection.

Thereupon H. E. Jacobson and Stanley J. Hould were sworn and examined as witnesses for plaintiffs and Plaintiffs' Exhibit No. 33, a bumper from an automobile, was offered and received in evidence without objection, and a sketch of a bridge, marked Plaintiffs' Exhibit No. 34, was marked for identification, whereupon further trial of the causes was continued until 10:00 a.m. tomorrow.

Entered in open Court October 26, 1956.

E. WARREN TOOLE,  
Clerk.

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

MINUTE ENTRIES,  
SATURDAY, OCTOBER 27, 1956

Present: Honorable W. D. Murray, Judge.

Counsel for respective parties present as before and trial of cause resumed.

Thereupon Stanley J. Hould resumed the witness stand for plaintiffs, whereupon Pat West was called out of order as a witness for defendant and was sworn and examined, and William D. Dove and Douglas Hardesty were sworn and examined as witnesses for plaintiffs, and plaintiffs' exhibits Nos. 17, 19, 20, 22, 23, 24, 25 and 26, respectively, heretofore marked, were now offered and received in evidence without objection, and plaintiff's exhibit No. 18, heretofore marked, was now offered and received in evidence over defendant's objection, and plaintiffs' exhibit No. 34, heretofore marked, was also offered and received in evidence over defendant's objection.

Thereupon the envelope containing the depositions, sealed therein, of Gordon Joseph Jobin, George Edward Thompson, Armande Morand, and Thomas Edward Walsh was opened, and such depositions, and the stipulation for the taking of said depositions, were filed.



Thereupon plaintiffs offered in evidence the deposition of Armande Morand, the same was received in evidence without objection.

Thereupon plaintiffs offered in evidence the deposition of Gordon Joseph Jobin, and the defendant objected to that portion thereof commencing with line 20 on page 3 thereof through line 26 on page 5 thereof, and to that portion thereof commencing on line 13 on page 6 thereof and ending with line 4 on page 12 thereof, which objections were sustained, but otherwise said deposition was received in evidence.

Thereupon plaintiffs offered in evidence the deposition of Thomas Edward Walsh, and the same was received in evidence without objection.

Thereupon it was stipulated between counsel for the respective parties that the normal expectancy of a white male of the age of 47 years, the age and category of plaintiff Raymond O'Keefe at the time of the collision herein, was 24 years, and that the normal expectancy of a white female of the age of 36 years, the age and category of Mary A. O'Keefe (since deceased), at the time of the collision herein, was 37 years.

Thereupon plaintiffs rest, subject to the stipulation heretofore entered into and order of Court that plaintiff shall have the right at a session to be subsequently set by the Court to at a later date present rebuttal testimony orally or by deposition to the testimony of a certain witness for defendant not now available.



Thereupon Douglas Hardesty, heretofore sworn, was recalled and examined as a witness for defendant, whereupon further trial of the causes was ordered continued until Monday, October 29, 1956, at 9:30 a.m.

Entered in open Court October 27, 1956.

E. WARREN TOOLE,  
Clerk.

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[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

MINUTE ENTRIES,  
MONDAY, OCTOBER 29, 1956

Present: Honorable W. D. Murray, Judge.

Counsel for respective parties present as before and trial of cause resumed.

Thereupon Alexander Johnson Fuzesy, Walter Schoepski and Mrs. Walter Schoepski were sworn and examined as witnesses for defendant, whereupon that portion of the deposition of Raymond O'Keefe, taken before R. L. Robertson, a Notary Public for the State of Montana, on October 12, 1956, commencing on line 6 of page 44 thereof, through line 25 of said page, was offered by defendant and received in evidence over the objection of plaintiffs.

Thereupon it was stipulated by counsel for respective parties that the normal expectancy of a male of the age of 60 years was 14.5 years, and that the value of \$1.00 for 5 years was \$4.5797.

Thereupon Dr. Duncan Stuart McKenzie, Jr., was sworn and examined as a witness for defendant, and an X-Ray film, marked defendant's exhibit No. 35, was offered and received in evidence without objection, whereupon the defendant and counter-claimant rests, subject to the stipulation heretofore entered into and the order of the court that defendant shall have the right at a session to be subsequently set by the Court to produce the evidence of Mabel Keough, who is not now available.

Thereupon Raymond O'Keefe, heretofore sworn, was recalled and examined as a witness for plaintiffs in rebuttal, whereupon plaintiffs rest, subject as aforesaid to present rebuttal testimony orally or by deposition to the testimony of said Mabel Keough at a subsequent session as aforesaid.

Thereupon further trial of the causes was ordered continued until Wednesday, December 5, 1956, at 10:00 a.m.

Entered in open Court October 29, 1956.

E. WARREN TOOLE,  
Clerk.

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

MINUTE ENTRIES,  
MONDAY, JANUARY 14, 1957

Present: Honorable W. D. Murray, Judge.

Further trial of this cause was continued until 11:30 a.m. today, and thereafter at said time the same came on regularly for further trial, Messrs. Mark J. Doepker and Stephen Granat being present and appearing for the plaintiffs, and Messrs. Edward C. Alexander and Emmett C. Angland being present and appearing for the defendant.

Thereupon Mabel Keough was sworn and examined as a witness for defendant, whereupon defendant rests.

Thereupon William C. Dove, who had heretofore been sworn, was examined as a witness for plaintiffs, and an offer of proof made by counsel for plaintiffs was taken into Court Reporter's official record and denied by the Court.

Whereupon the evidence being closed, Court ordered that plaintiffs be, and are allowed 30 days after receipt of a transcript herein, then and there ordered by counsel, within which to serve and lodge with the Court their proposed findings of fact and conclusions of law and supporting brief; that the defendant be, and is allowed 30 days thereafter within which to serve and lodge with the Court his proposed findings of fact and conclusions of law

and supporting brief; and that the plaintiffs be, and are allowed 15 days thereafter within which to serve and lodge with the court their rebuttal brief, if any.

Entered in open Court January 14, 1957.

E. WARREN TOOLE,  
Clerk.

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[Title of District Court and Cause.]

Nos. 1798 and 1799

### SATISFACTION OF JUDGMENT

Know All Men by These Presents:

That for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations to the undersigned, defendant and cross complainant in the above-entitled cases, in hand paid for and in behalf of the plaintiff, full satisfaction is hereby acknowledged of that certain judgment rendered in the above-entitled court, and filed, entered and docketed in the above-entitled causes on the 19th day of August, 1957, in favor of the above-named defendant and cross-complainant, and against the above-named plaintiff, for the sum of Forty-six thousand Two hundred twenty-two and 66/100 Dollars (\$46,222.66) and costs taxed, together with interest thereon at the rate of six per cent (6%) per annum, and I hereby authorize and

direct the Clerk of said Court to enter the satisfaction of said judgment of record in said actions.

In Witness Whereof, I have hereunto set my hand and seal this 12th day of March, 1958.

[Seal] /s/ WALTER SCHOEPSKI, A/K/A  
/s/ WALTER SCHOEPSKI.

State of Wisconsin,  
County of Rock—ss.

On this 12th day of March, 1958, before me, Pearl MacRoberts, a Notary Public in and for the State of Wisconsin, personally appeared Walter Schoepski, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

[Seal]      /s/ PEARL MacROBERTS,  
Notary Public for the State  
of Wisconsin.

My commission expires June 14, 1959.

[Endorsed]: Filed March 24, 1958.

[Title of District Court and Cause.]

Nos. 1798, 1799 and 1800

NARRATIVE STATEMENT OF  
PROCEEDINGS AND TESTIMONY

Appearances:

HARRISON & GRANAT,  
Malta, Montana;  
DOEPKER & HENNESSEY,  
Butte, Montana,  
Attorneys for Plaintiffs.

HALL, ALEXANDER & BURTON,  
Great Falls, Montana;  
ANGLAND & MARRA,  
Great Falls, Montana,  
Attorneys for Defendant.

Be it remembered that the above causes were consolidated and came on regularly for trial before the Honorable W. D. Murray, United States District Judge for the District of Montana, sitting without a jury, at Havre, Montana, on October 25, 1956. The plaintiffs were present in person and represented by their counsel, James T. Harrison, Esq., of Malta, Montana, and M. J. Doepker, Esq., of Butte, Montana; the defendant was present in person and represented by his counsel, Edward C. Alexander, Esq., Emmett C. Angland, Esq., and Joseph R. Marra, Esq., all of Great Falls, Montana.

Thereupon, the following proceedings were had:



## APPELLANT'S CASE IN CHIEF

Mr. Alexander: May it please the Court, the defendant, with the understanding on those depositions, which the defendant is also interested in—we are, of course, still without [3\*] the testimony of the witness, Mabel Keough, and I understand the Court has made some——

The Court: Well, I made the suggestion that I think we would proceed with the taking of testimony so that all of the testimony that is now available, at least, be presented to the Court, and that thereafter, at a date convenient, we could set a session to take the testimony of that witness who is not now available, and in that connection, I pointed out that after that witness testifies, counsel for the plaintiff may very well have some rebuttal testimony to present, and we would have to make arrangements for counsel to present that, either by way of taking the testimony of the witness here in Court, or by deposition, which ever he wanted to do.

Mr. Doepker: That is perfectly agreeable to our side, your Honor.

Mr. Alexander: With that understanding, the defendant is ready, too.

The Court: Very well, let us proceed then. [4]

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

## RAYMOND O'KEEFE

## Direct Examination

My name is Raymond O'Keefe and I live at Sandwich South in the Province of Ontario, County of Essex, near the larger city of Windsor in Canada.

I had occasion to be driving in the State of Montana on the 30th day of August, 1955. I was riding in a 1955 Buick, it was a four-door hardtop, and at the time the members of my family were my wife and two children, Catherine and Michael and my wife's name was Mary.

On the day in question, about 9 o'clock or 9:30, my wife was driving the automobile, and something of an unusual circumstances occurred, which happened at approximately 9:30 a.m. A car swayed in front of her, the place was 12 miles and some fraction of a mile, slightly over 12 miles westerly from the City of Malta, Montana. The automobile collision took place at a bridge. It was a wooden bridge with three length members, one on top, one in the center and one at the bottom.

Our trip started from the farm where I resided, and on this morning, we had driven from Havre where we had been the night before. We arose approximately 5:20.

My wife got our breakfast that morning at the motel where we were staying and we packed our luggage and put the luggage in the car. We did not have to stop for gas the evening before, but we got gas somewhere between Shelby and Havre. Our return trip from our farm in Canada started at

(Testimony of Raymond O'Keefe.)

the City of Seattle, Washington, and on this particular morning, my wife, Mary, was driving our automobile. It was a clear morning, and it was warm, and we were driving easterly from Havre. The children were in the front seat.

Mrs. O'Keefe had considerable experience in operating automobiles; she had been driving for several years, 10 or 12 years or more; we had been married for 10 years; and for the last 4 or 5 years before this date, she drove every day; her driving was both pleasure and business, and she also operated motor driven equipment, tractors and trucks; and Mary O'Keefe had reached the age of 36 on the 30th day of August, 1955.

I occupied a position in the center of the rear seat as we were traveling eastward that morning and we had no occasion to stop between Havre and this bridge that we are talking about. As we traveled eastward that morning I made observation of the distance that we had traveled and it was approximately 101 miles which we noticed at about a mile westerly from the bridge in question.

Approaching the bridge in question from the west, it was a fairly straight road, it does go down slightly to the bridge from the west. Leaving Malta, however, there were several bends in the road, and we observed the bridge in question on that morning at some distance from it.

A. Oh, I saw it for quite aways.

Q. Now, fixing that, what you call the start of that "quite aways," fixing that place in your mind,

(Testimony of Raymond O'Keefe.)

will you tell us first on which side of the highway, or which sides of the highway, Mary O'Keefe drove that Buick car that morning?

A. On the right hand side.

Q. To your best recollection, did she at any time while driving cross over on the other side for any purpose, on the left side?

A. Well, I don't recall, unless she passed someone. I don't remember that she did. There wasn't very much traffic. We met quite a few combines going west.

Q. Were those combines east or west of Malta?

A. West.

Q. With particular respect to the position, or the distance [14] that you have related when you said you could see the bridge from quite aways, I would direct your attention now to the operation of the automobile from the start of that point which you say was quite aways, until you arrived at the bridge. You have now related that she stayed on the right-hand side, as near as you can remember, is that correct?

A. That is correct.

Q. And particularly now, coming into the bridge on the highway, on which side was she driving?

A. The right-hand side.

Q. Give the Court your best recollection and your best judgment of the speed that she was traveling at that time and place?

A. Well, I would say 40 to 45. She may have slowed to 40.

Q. Now, will you say whether or not, Mr.

(Testimony of Raymond O'Keefe.)

O'Keefe, that she continued on her own or right-hand side as she came upon the bridge, or did she swerve away from her own or right-hand side as she came upon the bridge, or went through the bridge?      A. No, she didn't.

Q. All right, now, directing your attention now to the traffic which may have been approaching at that time from the east, will you tell the Court whether you saw any automobiles in that immediate vicinity by the bridge coming from the east?

A. Yes, I did. [15]

Q. And what kind of vehicle or vehicles were they?

A. That would be this car that was in the accident.

Q. Did you observe any others in the immediate vicinity right at that time?      A. No.

Q. All right, now, in your own words, please, tell the Court what you saw happen with respect to the car that was coming from the east?

A. Well, I saw it coming down this incline, and when it got very close to her, it seemed to sway right at her. I raised up in the back seat.

Q. Now, you have mentioned an incline which has not been explained to his Honor yet in the testimony, and where, with respect to that bridge, is the incline you were talking about?

A. Well, it is——

Q. Speak up now.

A. It is a couple hundred feet, I would say, maybe more, I didn't measure it.



(Testimony of Raymond O'Keefe.)

Q. And with respect to the bridge, does the incline—or where did it start on this day?

A. Well, it isn't too far back. I don't think it would be over 30 or 40 feet.

Q. And then the incline would go towards which direction?      A. East.

Q. Before you saw the car coming down this incline, this car [16] that collided with you, did you see it beyond, down the highway to the east, at any time that you recall?      A. No.

Q. Have you since learned whether that incline continues, or whether there are depressions eastward from the top of the incline?

A. I have.

Q. And what is the situation there?

A. From where you get back far enough, you cannot see the bridge over the incline.

Q. I didn't hear the last part of your answer.

A. Over the incline, you cannot see the bridge.

Q. Now, did you notice since any highway markers somewhere along that incline?

A. Yes.

Q. As to whether it was there on that occasion, do you know?      A. I do not.

Q. But when was the first time that you had a chance to observe whether there were highway markers in that immediate vicinity?

A. The 15th of October.

Q. Of this year?      A. Yes.

Q. Now, then, let's please relate in detail, as



(Testimony of Raymond O'Keefe.)

near as you [17] can recall what took place as the car that you referred to came over this incline and came toward you?

Mr. Angland: Just a minute. Read the question, will you, Mr. Parker?

(Question read back by Reporter.)

Q. Did you understand that question?

A. Yes.

Q. All right, I want you to describe your remembrance of the collision, how it happened, in some detail, please.

A. Well, as I saw this car coming at us, it seemed to be coming fast and swerved just before it got on top of her.

Mr. Alexander: Move that the answer be stricken as not responsive. The question was as it came over the incline towards you.

The Court: Overruled.

Q. Do you have some memory at this time from being there immediately following the collision?

A. I do.

Q. And do you have some memory at this time of the circumstances immediately before the collision? A. Yes.

Q. All right. Approximately, then, will you tell us where on the bridge the actual impact or collision took place?

A. Towards the easterly end.

Q. And in the instant immediately before the collisions, [18] where was the Buick car?

(Testimony of Raymond O'Keefe.)

A. Near the right rail.

Q. And where did the impact between the two cars occur, as near as you could tell in the instant that it occurred?

A. You mean in the position on the bridge?

Q. I mean the way the cars came together, as near as you can remember?

A. Well, as near as I can remember, his car hit her front end. [19]

I have had occasions since to observe photographs of the damaged cars and my counsel have obtained pictures of these cars.

In the collision, I was thrown over into the glass of the windshield or the side window somewhere, and when the car landed in the ditch, I removed the youngsters and asked Mary if she was hurt, she didn't answer and I got out and tried to move her and I couldn't; I walked back to see if the other car might have taken fire; those people were both sitting in the front seat; Mr. Schoepski, his leg was hanging out of the left side of the car; then I returned to our own car.

Immediately after the collision, the Buick car turned in a northerly or left-hand direction, into the ditch or barrow pit, as they call it. I made a casual observation of the position of the left front wheel and it had been driven upwards, I believe, and back.

Q. Will you say whether or not the movement of the Buick followed the crushed position of the front wheel?

(Testimony of Raymond O'Keefe.)

Mr. Alexander: Just a moment—Well, go ahead.

A. I would say yes, it did.

Q. Then it came to a stop where?

A. East of the bridge in this barrow pit.

Q. Now, then, immediately after this, what did you do besides speaking to your wife?

A. Well, I tried to take care of the youngsters as little as I could. This woman started coming and wanted me to lie down.

Q. How long did it appear to you, approximately, before any other vehicle showed on the scene?

A. Well, I would say at least five or six minutes. [21]

I observed the position of Mr. Schoepski's automobile immediately after the collision and it was on the bridge heading to the left at an angle to the south side, if the road was running west and the front end of his automobile was across the center line to the south. Immediately after the collision, my wife was in a sort of a standing position around the steering wheel, fairly well standing. I was loaded into an ambulance, I believe with Mr. Schoepski and I was bleeding from the forehead and hands, one hand was bleeding bad and the forehead and nose. I was laying on the ground and I heard somebody volunteer to take the children into Malta in a station wagon.

Q. Were you alone in the room in the hospital at that time? A. No, I was not.

Q. Who was in the hospital room with you?

(Testimony of Raymond O'Keefe.)

A. Mr. Schoepski.

Q. Did Mr. Schoepski say anything while you and he were in the room together?

A. Yes, he did.

Q. What did he say?

A. Oh, on the second day, I don't know whether he knew who I was or not, he wondered how the Milwaukee ball team was getting along. I heard him make a phone call. He did a lot of talking at night.

Q. Well, what, if any particular thing, did he say relating to the accident or the driving?

Mr. Angland: Just a minute. We will object to this; this isn't any part of the *res gestae*.

Mr. Doepker: Why does it have to be a part of the *res gestae* with the defendant saying it?

Mr. Angland: You are talking about admissions, then?

Mr. Doepker: Certainly.

The Court: The objection is overruled.

Q. You may answer, please.

A. Well, he made this—I don't know where I left off, but he made the phone call and said that there was nothing serious, [27] just a head-on collision; and at night he kept talking, he said I was too old, I never should have made the trip, so I got the nurse and complained about it. They moved me the next day. I couldn't sleep. [28]

The position my family were in the car as it left Havre was changed between Havre and the scene of the accident, Michael came back into the back seat where I was, and the little girl was asleep in the

(Testimony of Raymond O'Keefe.)

front seat, and I was sitting a little to the right of the center of the rear seat, and from where I was seated there was no obstruction to the view of the road ahead. At the time of the accident the condition of the weather was such that it was a clear morning, there was not any fog or anything to obstruct my view and there were no obstructions on either side of the bridge that could have obstructed my view, except there was that rise to the east, and there were no other cars in the immediate vicinity at the time of the collision, immediately before the accident.

I have been on the stand previously and was excused for the purpose of having some photographs introduced that were taken at the scene and subsequent to the collision.

Photograph No. 2 of Plaintiff's Exhibit 4 I recognize as an automobile that is to the left of the picture and headed down with some men standing around it, that is a picture of the Buick, my wife's car. I also recognize Plaintiffs' Exhibit 1 and that is also a photograph of the Buick car.

Plaintiffs' Exhibit No. 4 photograph 12 shows the automobile at the position indicated and No. 15 of Plaintiffs' Exhibit 4, I also recognize, and each and every one of those photographs and the position of the automobile is that of the same automobile—it is the same car.

If I take Plaintiffs, Proposed Exhibit No. 9 and look through the viewer, I recognize the vehicle in



(Testimony of Raymond O'Keefe.)

that Exhibit. That is the Buick. Plaintiffs' Exhibit No. 10, looked at through the viewer, I recognize as the Buick automobile.

After the collision, I have stated that I went back to the Pontiac car and at the time, I did not know the people that were in the car, but later I became acquainted. I have previously referred to a man seated in the Pontiac car with his leg hanging out and that man was seated behind the steering wheel and there was also a lady in the car with him, in the front seat.

### Cross-Examination

Going back to the scene of the accident on the 30th of August, 1955, I stayed at Havre that night and we got up quite early that morning. My wife prepared breakfast. We had a good breakfast that was cooked right at the motel. I didn't have a watch, but there was a clock at the motel and that is how I know that we left at twenty to seven on the morning of the 30th of August.

As we went from Havre to the place where the accident happened, we passed some cars on that stretch of road. Our car was all gassed up west or southwest of Havre the evening before and we didn't have to make any stops to get gas. We drove right straight through without any stops up to the time of this accident and collision. I did not stop at a place called Choo Choo Inn in Malta. It is not a fact that we had breakfast in Malta at the Choo



(Testimony of Raymond O'Keefe.)

Choo Inn that morning and we did not stop at the Choo Choo Inn for any purpose.

We met some combines, I thought it was at Malta, but since I have gone back, it is a large steel bridge west of Malta, and the little boy was awake at that time. The little boy rode in the front seat of the automobile part of the time and where he started to ride in the back seat is pretty hard to tell—I don't know. In all events I was in the back seat all the way from Havre to the point of the accident. The little boy was not awake from Havre to the point of the accident, he was asleep towards the end. The little girl was asleep in the front seat.

As we came upon the bridge in question, I observed the bridge for quite aways.

Q. Now, as you came up to the scene of this accident, as I understand it, you observed the bridge at quite aways?      A. Yes.

Q. But I never was able to tell how far away you were from the bridge when you first observed it.      A. Well, I couldn't tell you now.

Q. Well, can you give me any estimation, approximately how far in hundreds of feet or tens of feet?

A. Oh, I would put it at four or five hundred feet.

Q. At four or five hundred feet. And at the time that the Buick was four or five hundred feet from the bridge, did you see any traffic coming from the other direction?      A. No, I didn't.

(Testimony of Raymond O'Keefe.)

Q. You didn't see any traffic, that is coming westward. When was it that you first observed the Pontiac automobile?

A. I first noticed it as we were nearing the bridge.

Q. As you were nearing the bridge?

A. That's right.

Q. That is, the car that Mrs. O'Keefe was driving?

A. Yes.

Q. Can you tell me about where your car, the car you were riding in, was when you first observed the Pontiac, in feet, let us say?

A. No, it is a pretty hard thing to do when you are moving. [155]

Q. Well, roughly, at least?

A. Oh, I would say 40 feet back or so.

Q. So, when the car you were riding in was 40 feet back to the west of the bridge you saw the Pontiac?

A. Yes.

Q. Now, where was it that you saw the Pontiac with reference to the other end of the bridge or some natural object?

A. Coming from the east to the bridge.

Q. Was it about the top of the hill?

A. No, it was coming down.

Q. And how far down the hill would you say it was?

A. I have no way of measuring it.

Q. Pardon?

A. I have no way of measuring it.

Q. Well, would it be half way down the hill?

(Testimony of Raymond O'Keefe.)

A. I don't know the length of the hill.

Q. It doesn't matter how long the hill was, I just want to know if it was half way down the hill or a quarter of the way?

A. I would put it at about a hundred feet from the bridge or so.

Q. About a hundred feet from the bridge. And were you able to estimate the speed of the Pontiac?

A. Well, it seemed to be coming pretty fast.

Q. And at that time, the Buick you were riding in was going [156] about 40 to 45 miles an hour?

A. I told you that, 40 to 45.

Q. When you saw that Pontiac a hundred feet from the bridge, it was on its right side of the road, wasn't it?      A. Yes.

Q. And it continued on its right side of the road?

A. Until it got near the bridge, or entering the bridge, one of the two.

Q. Well, which was it, did it get on its wrong side as it came into the bridge, or after it was on the bridge?

A. As it was coming in, I would say.

Q. As it was coming into the bridge?

A. Yes.

Q. And what did the Pontiac do then, just turn right towards you?      A. Yes.

Q. I think you said—now, when Mrs. O'Keefe came on the bridge, you told counsel that she was right near the right rail?

A. I said she was about a foot from it.

(Testimony of Raymond O'Keefe.)

Q. About a foot is the distance that she was from the rail?      A. As she entered the bridge.

Q. As she entered the bridge, and was she about a foot from the rail all the way along then?

A. I don't think so. [157]

Q. Pardon?      A. I don't think she was.

Q. Did she get closer or farther away?

A. She seemed to crowd over.

Q. She crowded over even closer?

A. Yes.

Q. And at about what point on the bridge was it that she crowded over closer to the rail?

A. It is pretty hard to tell. It happened too quick.

Q. I realize that, but you tell me she crowded over even closer and I want to know about where it was on the bridge. That bridge is about 80 feet long.      A. Yes, I know it is, maybe longer.

Q. Whatever its length is, it is quite a long bridge. Now, was your wife half way down the bridge when she got over even farther?

A. I don't think she was.

Q. She was still——

A. I think she crowded over shortly after she entered the bridge.

Q. Shortly after she entered the bridge.

A. She quite likely saw the other car, too.

Mr. Alexander: Now, just a minute. I move that that answer be stricken as not responsive.

The Court: That answer may be stricken. [158]

(Testimony of Raymond O'Keefe.)

Q. You think now she was close to the rail right when she got on the bridge?

A. I said a foot.

Q. A foot, and then she crowded even closer?

A. I have told you that, yes. [159]

Q. Now, when she crowded even closer, will you tell me what was the Pontiac doing at that time?

A. It was coming over the center.

Q. It was coming over the center. And how far over the center did the Pontiac come?

A. I am not in a position to tell.

Q. Well, was just the front end over the center, or did the whole Pontiac come over?

A. The front end was over when I got out after.

Q. I am not asking about after you got out. Let's just stick now to before the collision took place. Did the Pontiac turn so that only the front wheels went over the center line?

A. Yes, it turned.

Q. The rear wheels were on their own side of the road?

A. I wasn't in a position to see the rear wheels.

Q. You didn't see the rear wheels?

A. No.

Q. And this took place about where on the bridge, when the Pontiac turned?

A. It seemed to be about two-thirds of the way to the east end, around two-thirds of the way.

Q. In other words, the Pontiac had come one-third of the distance on to the bridge?

A. Yes.



(Testimony of Raymond O'Keefe.)

Q. And Mrs. O'Keefe had come two-thirds of the way?

A. True. That is what I thought when I went back and looked at it.

Q. Well, can you look at Picture No. 4 of Plaintiffs' Exhibit No. 4 and tell me if that is about the place on the bridge where the Pontiac swerved?

A. I would say that it is.

Q. And did the front of the Pontiac turn as much over the road as it shows in that picture?

A. Yes.

Q. Or was it more?

A. Well, it was well over at a good angle.

Q. Well, what do you mean by "well over"? A foot, or three feet, or ten feet?

A. I know it was over the center of the road.

Q. On what do you base that, what do you use for the center of the road, your eye or——

A. I would say that I did.

Q. I think, Mr. O'Keefe, when Court closed on yesterday afternoon, we were trying to ascertain how the Buick and the Pontiac collided. Now, before we go on with that, as the Pontiac came into the bridge, would you describe it as jumping around like a frog in water?

A. Well, I told you down in Great Falls that day that it seemed to jump at the Buick like a frog.

Q. It jumped at the Buick like a frog.

A. Well, it moved very fast.

Q. Now, it might help us to ascertain how the cars come together if you could just show the Court.



(Testimony of Raymond O'Keefe.)

I am interested, of course, only in the center line of the highway, and on the back of this tablet here, there is just a red line where I have put "W" to indicate the west end, and an "E" over here, it indicates the east end. Now, let's take this little 15 cents store red car, and let that be the Buick, and take this little yellow 15 cents store car, and let that be the Pontiac, and would you just step down here and show the Court, the red line being the imaginary center line of the bridge at the time of the collision, and show us how the two cars came together as you saw it?

A. Do you think that you could?

Q. I wasn't there, and I am sure that I couldn't, Mr. O'Keefe. Now, you were, you told me that the car swayed, other times you told Mr. Doepker it swerved, and I think it would help the Court if you just showed what you saw.

A. I'll try.

(Witness manipulates cars.)

Q. And you are now showing the Pontiac as curving right across the center line when you demonstrated there. Now, take the Buick, and put the Buick at about the place against the Pontiac where it was when the impact took place, if you know.

A. I would suggest in here somewheres (indicating).

Q. Now, is that about it?

A. Somewheres around there. It is a pretty hard thing for me to do.

(Testimony of Raymond O'Keefe.)

A. I was wondering if I had this car backwards. Somewheres in that position.

Q. Set the Buick about the way it was with reference to being parallel to the imaginary center line of the road at the point of collision.

(Witness demonstrates.)

Q. You have it set pointing a little bit toward the north. Now, the way the cars are now, is that the way the collision took place?

(No audible reply.)

Q. And you have placed the yellow car—have you finished, have you got it set? You have placed the yellow Pontiac sitting at an angle across the road of approximately 45 degrees pointed south-westerly?

A. Yes.

Q. And you have the Buick parallel to the imaginary center line of the highway with the left side of the front bumper of the Pontiac coming into collision with the left corner of the red Buick?

A. Well, I am just putting that there as near as I can. I didn't have very long to look at it when they were together.

Q. But I am asking you for your impression now.

A. And that is what I am giving.

Q. Now, that Pontiac, as it came down the hill from the east, and when it turned that way was traveling at a high rate of speed?

A. I thought it was; I have said so.

Q. And the Buick was traveling at a speed of 40

(Testimony of Raymond O'Keefe.)

to 45 miles an hour?           A. Yes.

Q. And it is in that fashion that the cars came together as you have illustrated here?

A. To the best of my knowledge.

Q. Now, do you know what happened to the Pontiac after that time?           A. I do not.

Q. Do you know of your own knowledge where the Buick went?           A. Yes.

Q. What happened to the Buick, will you demonstrate how it proceeded?

A. Well, it went around through here (indicating). The front end of the Pontiac was cut off.

Q. The front end of the Pontiac was cut off?

A. Sliced across through here, smashed across.

Q. You are pointing now to the left front fender of the Pontiac——           A. Yes.

Q. As having been sliced off. Now, the Buick did what, while I hold the Pontiac?

A. It went around through here (indicating).

Q. With the rear end skidding to the south?

A. I suppose.

Q. If you don't know——

A. I know, there was marks on the rail.

Q. But about all you know is that the Buick passed beyond the Pontiac and down into the barrow pit on the north side?

A. Yes, there was tracks there.

Q. Now, as we—before the collision which you have just described, as I understand it, you were in the back seat of the Buick?           A. I was.

(Testimony of Raymond O'Keefe.)

Q. And sitting about—where was it, somewhat to the right-hand side? A. Yes.

Q. Prior to this collision, do you know whether Mrs. O'Keefe applied the brakes?

A. I don't know.

(O'Keefe narrative resumes.)

I think Mrs. O'Keefe slowed the car, she generally did at a bridge. She slowed down and waited for a car at the bridge west of there, and on this particular bridge, I was watching what was happening and I was sitting back in the back seat with my back against the back cushion. I wasn't lying down; and from the position I was in the car I could see where the center of the highway was and I could see that right up to the time of the collision. When the Pontiac came onto the bridge, I had a view of everything ahead of me and I didn't see any other car following the Pontiac down the hill.

Q. Didn't you see any other car following the Pontiac? A. No.

Q. Down the hill? A. No.

Q. Calling your particular attention to what might be described as a laundry panel, there was no laundry panel? A. There was not.

Q. Did you see a Ford station wagon anywhere in the vicinity just before the collision?

A. I did not.

Q. And I think that you said that it was at least five or six minutes before anyone came on the scene? A. That is correct. [167]

(Testimony of Raymond O'Keefe.)

Looking at photograph No. 8 of Plaintiffs' Exhibit No. 4, we see a photo looking east from a point in the center of the highway about 500 feet west of the bridge.

Looking at photograph No. 8, it is a pretty hard thing for me to tell from this photo where it was when I first saw the Pontiac, but I will mark a letter "B" on the Exhibit, but I don't think it is very fair for me to try to mark on this.

(Then the witness does as suggested and draws a line crosswise at about the point and relates that it couldn't be accurate—it is because the photograph doesn't show the distance too well.)

Looking at picture No. 12 of Exhibit No. 4, I would say that the Pontiac was just coming over the top of the hill that shows in picture 12 of Exhibit 4. It would be back a hundred feet anyway from the bridge—at least a hundred feet—and at that time I think the Buick car was approximately 40 feet from the westerly end of the bridge. So that when the Pontiac was at least a hundred feet from the east end of the bridge, the Buick was 40 feet from the west end of the bridge; and when the Buick automobile came to rest in the ditch, the first thing I did was took the little girl out of the front seat—took the two children out of the car. I took the children out of the car.

Q. Up to this time, you had not spoken to your wife?  
A. Yes, I did.



(Testimony of Raymond O'Keefe.)

Q. When did you speak to her?

A. When I was taking the little girl out, I asked her if she was hurt.

Q. And that was immediately after the Buick came to rest, you got out and spoke to your wife?

A. I spoke to her in the car.

Q. Is that the occasion that she moaned?

A. No.

Q. When was the occasion that she moaned?

A. When I tried to move her.

Q. And when was that?

A. After I put the youngsters out of the car.

Q. This is before you went back to the Pontiac to see if it was on fire?      A. It is, yes.

Q. Did she answer at all when you spoke to her in the car the first time?      A. No.

Q. You took the children up on the highway?

A. I put them out on the ground and then went around to her. [172]

Q. Now, when you took the children up on the highway, didn't a young lady meet you——

A. No.

Q. ——and help you with one of the little children?      A. No.

Q. That did not happen. Then, you immediately went back to the Buick?      A. I did.

Q. And at that time you spoke to your wife and she moaned?      A. That's right.

Q. And then what did you do?

A. I came back and tried to comfort the youngsters.



(Testimony of Raymond O'Keefe.)

Q. And having done that, when was it you went to the Pontiac? A. After?

Q. You spoke to your wife, she moaned?

A. Yes.

Q. You came back and tried to comfort the youngsters? A. Yes.

Q. Then you went to the Pontiac to see if it was on fire?

A. I went to the Pontiac before that.

Q. Before you comforted the youngsters?

A. Yes.

Q. You didn't go to the Pontiac before you went to your wife and she moaned? A. No. [173]

Q. That was almost immediately after the car——

A. Well, it took a little while to get them out.

Q. But it was a matter of seconds?

A. Oh, it was a little while.

Q. Could you give me an approximation of the time? A. I couldn't.

Q. Pardon?

A. I couldn't. I had a little trouble opening the rear door, if I recall right.

Q. That is the door——

A. To the left, the rear door.

Q. Then you went up to the Schoepski car?

A. I did.

Q. And then you came back to your wife again?

A. I did.

Q. Now, you told Mr. Doepker that you put your wife's purse and some other articles in your

(Testimony of Raymond O'Keefe.)

pocket, or put something in your pocket, I believe it was your wife's purse?

A. I took the purse out of the car, the front, and a watch.

Q. And do you know which pocket you put the purse in?      A. I don't.

Q. It wasn't your hip pocket?

A. It could have been.

Q. Are you sure that wasn't a glass bottle that you put in your pocket at that time? [174]

A. I am.

Q. After you had talked to your wife and taken the children up on the bank, did you take anything out of the Buick?      A. I took some blankets.

Q. What did you take the blankets out for?

A. For the youngsters.

Q. That was immediately after you had taken them up on the hill?

A. No, after I came back.

Q. After you had come back from the Pontiac?

A. Yes.

Q. Now, didn't you go down to the Buick then and throw some bottles of the kind containing beer over the right-of-way fence in front of the Buick?

A. No.

Q. You did not do that?

A. Not to my knowledge.

Q. Well, if you had, you would have known about it, wouldn't you?      A. I think so.

Q. You were perfectly conscious of all the things you have been telling us thus far?

(Testimony of Raymond O'Keefe.)

A. Yes.

Q. And although your face was cut, you could see the things you have been telling us about thus far? [175]

A. Yes.

Q. Had anyone had anything to drink that morning?

A. No.

Q. In the way of alcohol beverages of any kind?

A. No.

Q. Weren't there a lot of bottles in the back seat of the Buick

A. There was.

Q. And you didn't throw any of those bottles?

A. I may have dragged some out with the blankets.

Q. Were there any bottles or cases of beer in the trunk of the Buick?

A. I have been told there was a case of empties.

Q. Do you know?

A. I don't.

Q. That is just what you have been told?

A. Yes.

Q. That there was a case of empties in the trunk of the car?

A. Yes, I was told that.

Q. You had never seen that case?

A. I never bothered with the trunk of the car.

Q. Now, when you left from Havre that morning, you stayed awake all of the way from Havre to the point of collision?

A. I did. [176]

Q. There isn't any question about that?

A. There is not.

Q. Do you recall when your deposition was taken in Great Falls, in an unguarded moment,

(Testimony of Raymond O'Keefe.)

you said something about you getting the blanket to lay down and sleep?      A. I did not.

Q. Well, you recall that deposition having been taken?      A. Yes.

Q. At which time Mr. Doepker and Mr. Harrison were present, Mr. Angland, Mr. Marra and myself, and Raymond Robertson, the Court Reporter, in a room adjacent to my office in Great Falls on the 12th of October?

A. I brought that to Mr. Doepker's attention since I read that.

Q. Now, prior to reaching the place where the question in controversy arose, we had been talking about these beer bottles, and I will ask you if I didn't ask you the following questions and you make the following answers——

Mr. Doepker: Just a moment, your Honor, we object to this form of interrogation here because the proper procedure is not being followed. I think it is necessary for counsel to show that deposition to the witness and let him read it over and then ask questions about it.

The Court: Yes, I think you should.

Mr. Alexander: Shall we open the original deposition? [177]

Mr. Doepker: Your copy is okay.

Mr. Alexander: I have got some red lines on it.

The Court: You may open it.

Mr. Alexander: The deposition has been filed, has it not?

The Clerk: Filed unopened.

(Testimony of Raymond O'Keefe.)

Mr. Alexander: At this time, we would ask that the stipulation for taking the deposition, and the deposition of Raymond O'Keefe, after having been opened, be noted and filed with the Clerk of the Court.

The Court: It is.

Q. (By Mr. Alexander): Mr. O'Keefe, I now hand you your deposition which was taken at the time and place which I have related, and call your attention to page 44, starting with line 6, and going down to and including 21, and ask that you familiarize yourself with those questions and answers.

Mr. Doepker: Just a minute, all you have to do is familiarize yourself with it and then answer his questions as he asks them to you.

Q. Now, referring to that portion of the deposition, Mr. O'Keefe, I will ask you if I did not ask the following questions and you make the following answers: Question, Now, what kind of bottles were those? Line 7——

A. Beer bottles.

Q. No, I'll do the reading. Answer, Beer bottles. I thought [178] you lost the place. Question: And about how many were there? Answer: I don't know, I didn't know they were in there until that morning. Question: Have you any idea how they got there? Answer: Yes.

A. Yes.

Q. I'll do the answering. Question: How did they get there? Answer: Well I have a little lad at home that picks them up, and when he was around these



(Testimony of Raymond O'Keefe.)

motels, he thought he was getting something given to him, and he was hiding them in the car, and he was thinking he was going to sell them, and I got in the back that morning and I found the bottles when I got in to lay down and to move the blankets over and sleep, and I removed the blankets, and he had them covered up.

The Court: What's impeaching about this?

Mr. Alexander: I asked him if he hadn't indicated——

The Court: He said there were bottles in the back of the car.

Mr. Alexander: But we are talking about laying down to sleep, and I asked him if in an unguarded moment in Great Falls he hadn't said that when he got in the back to lay down to sleep, he moved the blankets.

The Court: Does he say in the deposition that he moved the blankets when he laid down to sleep?

Mr. Alexander: Yes, your Honor, I think he does. Line 19 is what I am referring to. [179]

The Court: Oh. Well, that question and answer. All the rest of it isn't impeaching.

Mr. Alexander: I simply wanted to orient him with the preceding questions.

Q. (By Mr. Alexander): Now, did I ask those questions, and did you make those answers which I read?

A. Can I—what about the next question?

Q. I am sure Mr. Doepker will take that up. I am asking you as far as we have gone.



(Testimony of Raymond O'Keefe.)

The Court: You can answer that yes or no, whether or not you made those answers, and then you can make any explanation that you feel called upon to make.

A. Well, I think you were——

The Court: Well, answer the question first. Was that question asked you and did you make that answer?

A. Well, I have changed it here.

The Court: That is not the question. The question is, at the time of the taking of this deposition, was that question asked you and did you make that answer?

A. I did not tell him that I laid down to sleep.

Q. Then you did not make the answer that is in the deposition, is that your answer?

A. That is my answer. [180]

The highway patrolman asked me about the ownership of the car that we were riding in. Whether he mentioned the ownership or not, I wouldn't say, but I gave him a statement. I did not tell the highway patrolman that I was the owner of the Buick. I am clear in my mind that there were no vehicles anywhere in sight at the time of this collision, and there were none there when I came back to Mr. Schoepski's car which would be for about 5 minutes.

Q. These empty bottles which were in the car, do you know about how many there were that you discovered? A. I do not.

Q. Were there any full bottles of beer in that car?

(Testimony of Raymond O'Keefe.)

A. I was told there was a full bottle in the trunk.

Q. A full bottle in the trunk, just one full bottle?  
A. And a can, I believe. [185]

Q. You knew nothing about that?

A. I didn't.

Q. Now, you have told me that the morning of the accident there had been no alcoholic beverages consumed by you or by your wife?

A. That is correct.

Q. That night at Havre, from the time you got into Havre, had any alcoholic beverages been consumed by either you or your wife?

A. There was nothing consumed by her.

Q. At any time? A. No.

Q. Those beer bottles that were in the back of the car, do you know how they got there?

A. I do now.

Q. How did they get there?

A. The little fellow picked them up.

Q. That is the little boy who is here in the courtroom?  
A. Yes.

Q. You had nothing to do with those bottles at any time?  
A. No, I did not.

Q. Didn't the highway patrolman ask you about the beer bottles in the car?

A. He may have, I believe he did.

Q. And didn't you at that time tell him that you were saving [186] the beer bottles to take back to a boy in Windsor?  
A. No, I did not.

Q. You didn't say that? A. No. [187]

## TESTIMONY OF CLEO E. COLES

My name is Cleo E. Coles. I am a photographer in Malta.

I was a photographer in Malta on the 30th of August, 1955, and on that day the sheriff's office called me to a point which they said was about 10 miles or so east of Malta.

In response to that call, I made some photographs. I have with me the negatives of the photographs taken at that time.

From the negatives, I made some prints. I made them correctly. I put a number on each of the negatives which shows on the print. There are 15 different numbers.

I had the camera at eye level. That was around five feet in my base above the terrain I was standing on. In each case that was the position I took the pictures from.

I have a Crown Graphic camera made by Eastman Kodak. It is a recognized type of camera to take photographs with.

I would say that each and every one of the photographs correctly depict the scene at which the camera was directed at the time.

I took these pictures from around 10:30 to around 11:30 a.m. on August 30, 1955. I went about 12 miles east of Malta to a bridge (No. 4-3610-38.8) to take these photographs.

Print No. 1 of Plaintiff's Exhibit 4 is a photograph of a red Buick out at the scene. The red Buick was at the east end of the bridge in the

(Testimony of Cleo E. Coles.)

north barrow pit headed more or less north, I believe.

When I took the photograph, I was standing on the north top part of the barrow pit looking more or less down at it. The photograph correctly shows the conditions that there were there on that occasion.

Photograph No. 2 shows the extreme east end of the bridge and the red Buick in the barrow pit, and a wrecker and some debris from the wreckage. The debris is piled at the east end of the bridge on the north side. That also correctly shows the condition that obtained there at the time the photograph was taken. All these were taken from approximately five feet height.

Photograph 3 of the Exhibit 4 is a view looking west taken from the east end of the bridge, showing a Pontiac automobile, some wreckage, some people, and a line-up of vehicles waiting to get through.

When this photo was taken, I was in the center of the highway at the east end of this bridge with my camera pointed looking west. I was looking directly down the center of the highway.

This is print No. 4 taken also from the center of the highway looking east, and it was taken from almost the west end of the bridge, not quite. The camera was pointed east and this shows a wrecked Pontiac and people. I had my camera pointed directly down the highway easterly from the center of the bridge. This also correctly shows the condition as I observed it upon that occasion.

(Testimony of Cleo E. Coles.)

Print No. 5 was taken from the right hand side of the highway at a point in about the middle of the bridge. The camera was looking east and it shows the front end of the wrecked Pontiac, the wrecker, people, some vehicles. The vehicles were on the north side of the bridge and on the east end of the bridge.

My camera was about 5 feet high. On the right hand side of this photo there is some splintering of the rails and part of the bridge timbers. They appeared to be fresh and this correctly shows the splintered condition on that side.

I saw some red paint on those timbers.

Print No. 6 is a general view of the highway, bridge, and vehicles. The camera was pointed approximately northwest, and I was back about a hundred feet from the east end of the bridge. I was off in a field south of the highway east of the bridge. This photo shows the south rail of the bridge and a wrecker, station wagon. I am quite sure there is an ambulance.

Print No. 7 was taken from the center of the highway at a point about five feet above it. The camera was looking west, and it was about 500 feet from the bridge.

There is a sign on the right hand side of this photograph, a triangular sign. It correctly shows the relative position of that sign from the position. I have just stated I was in this position from the sign. With respect to the rest of the conditions



(Testimony of Cleo E. Coles.)

and what appears to be in the photo, it correctly shows the scene as I took it on that morning.

In print No. 8, the camera was over the center of the road, Highway No. 2, about five feet above it, and it is looking east, and approximately about 500 feet west of the bridge, looking east. My camera was directed approximately directly down the highway.

It correctly shows the highway to the west of this bridge as it existed at that time.

Print No. 9 is a picture that I took. It shows the bridge. The camera was looking north at a point about 250 feet south of the bridge.

Print No. 10 is looking south from a point about 250 feet north of this bridge. It shows the bridge, the creek, and the power pole and some people.

Print No. 11 is a picture of the bridge. The camera was looking west, and I stood at a point in the center of the highway about 19 feet from the east end of the bridge, and held the camera about five feet high, five feet above the road. There is a Pontiac with a wrecker in front of it.

Print No. 12 shows the bridge, the north and south rail, approximately half of them, or less than half of them. I stood in the middle of the bridge, and the camera was pointed east, northeast at the time. It shows the red Buick in the barrow pit, the wrecker, and some other vehicles. The splintered part of the timbers are on the south side of the bridge. The Pontiac had been removed. There



(Testimony of Cleo E. Coles.)

were paint marks on the timbers at that time. The paint was red.

Print No. 13 is taken from the south side of the bridge looking up and north at the railing of the bridge, and showing the splintered condition as it is shown from that side, the south side. It appeared to be fresh.

Print No. 14 was taken in the field west and south of the bridge a photograph of the Pontiac after it had been removed and showing a crushed front end.

Print No. 15 of Plaintiffs' Exhibit 4, and I took it in Malta. It shows the wrecked Buick, the left side of the wrecked Buick, as the wreckers pulled it in. A wrecker is still holding it up in position.

Plaintiffs' Exhibit No. 6 is an enlargement from a section of Picture No. 5 of Exhibit No. 4, showing the south rail of the bridge and the splintered condition and the marks on it.

Plaintiffs' Exhibit No. 7 is an enlarged section of Picture No. 7 of Exhibit 4. There is no distortion whatever. It is larger, easier to see.

Plaintiff's Exhibit No. 8 is the front of Schoepski Pontiac.

Plaintiffs' Exhibit No. 9 is a picture of the O'Keefe Buick, the front end of the O'Keefe Buick.

Plaintiffs' Exhibit No. 10 shows the O'Keefe Buick from the left side, the left side of the Buick.

Plaintiffs' Exhibit No. 11 shows the O'Keefe Buick. It is kind of a three-quarter front view looking towards the rear and right side of the Buick.

(Testimony of Cleo E. Coles.)

Plaintiffs' Exhibit No. 13 is of the O'Keefe Buick taken at the same time and place, a three-quarter rear view of the right side of the Buick.

Exhibit No. 14 is a closeup of the right front fender of the O'Keefe Buick.

Plaintiffs' Exhibit No. 16 is a photograph of the O'Keefe car right side, closeup, near the center of the car. There are some white streaks.

Mr. Alexander: That was my next question. On all of these pictures, I take it that you are simply stating that they represent the picture you took?

A. Yes, sir. [71]

Mr. Alexander: And you have no knowledge as to whether the situation is the same situation as prevailed before you got there?

A. No, I don't know that. [72]

### Direct Examination

Photograph No. 17 of Plaintiff's Exhibit 4 is about 45 feet from the east end of the bridge, the south rail.

Photograph No. 18 shows the south bridge rail of this bridge we have been talking about, about 45 feet from the east end of the bridge at the south side.

Photograph No. 19 is the south rails of this bridge, about 40 feet from the east end of the bridge.

Photograph 20 is the south rails of the bridge, about 40 feet from the east end.

Plaintiffs' Exhibit No. 21 is an angle view of

(Testimony of Cleo Coles.)

the south rails of the bridge showing from about 20 feet to about 45 feet from the east end of the bridge.

Plaintiffs' Proposed Exhibit No. 22 shows the south rails of this bridge, about 30 feet from the east end of the bridge, closeups.

Plaintiffs' Exhibit No. 23 shows the rails on the south side of the bridge about 25 feet from the east end of the bridge.

Plaintiffs' Proposed Exhibit No. 24 shows the south rails of the bridge, looking southeast, the entire rail.

Plaintiffs' Proposed Exhibit No. 25 shows the entire bridge looking west in 3-D.

Plaintiffs' Exhibit No. 26 shows the entire bridge looking east, both rails.

Each and all of these exhibits correctly depict the portions of the bridge that I have identified as of the date upon which they were taken. They were taken on November 18, 1955, about 9:30 a.m.

### Cross-Examination

The red marks on the bridge started somewhere near the easterly end, toward the easterly end. They extend from about 40 feet from the end of the bridge to about 20 feet from the east end, and they cover a portion of about 20 feet on the bridge.

These transparencies which were last identified as being Plaintiffs' Proposed Exhibits 17 through 26, inclusive, were taken on the 18th day of November, 1955. Mr. Harrison requested them to be

(Testimony of Cleo Coles.)

taken. He did not go out there with me and point out the particular things that he wanted the photographs taken of.

I have never made any transparencies of the north rail of the bridge.

In respect to Photograph No. 11, and paying particular attention to a mark which appears above the right rear bumper or fender of the Pontiac there, I do not recall that mark. I wouldn't be able to say whether that was a gouge or not. By enlarging a small portion of Photograph No. 11, it probably could be told what it was. I don't know whether you could tell whether it was fresh or not.

Paying attention to Picture No. 12 in Plaintiff's Exhibit No. 4, and to the top bridge rail in the extreme left hand side of the picture I cannot tell what that is. I observed that there were fresh splintered wood on the south rail of the bridge. I don't remember whether or not I made any effort to ascertain whether there were splintered wood or anything of that kind on the north rail.

There is a smear on the negative of Picture No. 12 as well as on the print. That smear is definitely something that was there when the picture was taken, and it is not just an imperfection in the print of 12.

Looking at the print of No. 11 and to the mark near the fifth post on the right hand side of the picture at the top rail of the bridge, it does appear in the negative, so, it is something that was on the bridge rail, and not just a smear in the print.

(Testimony of Cleo Coles.)

When I got out there to the scene of the accident, I don't know what had been done by way of moving any of the vehicles or anything of that kind.

I measured the extent of the red marks, the 40 feet, on November 18, 1955, about 9:30 in the morning. As my memory serves me, they seem to be about the same place.

With respect to any of these pictures in Plaintiffs Exhibit 4, 1 to 15, inclusive, using the camera which I used on that day, if you hold the camera level and there is no ups or downs in the terrain, why 25 degrees would cover it. I imagine that is about 20 feet, but I am not sure. It covers 25 degrees. That would be, oh, around 15 or 20 feet, I just imagine, from where I stood at 5 feet.

Well, now, in the process of photography, the method of holding the camera makes quite a little difference, doesn't it, as to precise details, and particularly as to foreshortening and lengthening distances, it can be exaggerated.

Print No. 4 of Plaintiffs' Exhibit 4, and Print No. 5 show the foreshortening in number 5 of some of those posts.

This sleeper rail along here, or the large timber right next to the highway at the right hand bridge rail as you look at this photograph, I didn't measure it for width. Showing that timber in 5 and the same one in 4 there is a difference in perspective. I don't think it is distorted. It wouldn't mislead me. It can give an exaggeration. The human eye can exaggerate too. I try to avoid that when I am



(Testimony of Cleo Coles.)

taking pictures, exaggeration. While I try to avoid exaggeration, I sometimes get it.

On that day, all the pictures were taken in my attempt to get everything that was to be found, free lance.

### Redirect Examination

I was using what is known as a normal focal length lens for that size picture. The picture was four by five inches and a normal lens has a focal length about equal to the diagonal of a four by five picture. It has a five and a half inch focal length lens.

These photographs look about the same as they do to a human eye at a viewing distance of 14 inches from the photograph. That is known as normal. The picture is normal at about 14 inches, which means the same as to your eye.

### Recross Examination

He asked me about the perspective. That is what I was talking about. I don't call them distortions, I call it perspective. It can be exaggerated or not exaggerated. It is certainly normal from the viewing distance that you are viewing it from.

It is normal perspective, which is entirely different from 3-D or space viewing. Perspective is the converging of lines, or diversion in a photograph; whether it is spread out or close. I don't think the convergence of lines is different looking at it with one eye than two eyes. Our 3-D pictures are



(Testimony of Cleo Coles.)

the same, each one, except that they have a difference in parallax or a difference in position, one eye is in a slightly different position than the other eye, about two and three-quarter inches, I believe, in the normal eye, distance apart, so we see two different pictures.

The camera takes in about 35 degrees normally. The human eye—I am not prepared—I think about 90, you should begin seeing your hand somewhere out here (indicating) if you are looking straight ahead. They test you for that in flying.

As to whether you then get a different perspective on what you see, depending upon the width of your vision, I am not an optician, I couldn't tell you.

I know what perspective is, yes, sir.

#### TESTIMONY OF VERN KAPPAN

My name is Vern Kappan and I resided about 12 miles northeast of Saco on August 30th, 1955. Saco is east of Malta about 30 miles. On the 30th of August, in the early morning, I had occasion to drive from my ranch towards Malta and I arrived at the bridge at the easterly end of the lake around 9—10 o'clock—somewhere between 9 and 10. I was going west in a pickup. It was a Ford pickup. My son was with me at the time. I have heard in the courtroom some testimony concerning a wreck that occurred on a bridge and I am familiar with the bridge in question, and I had occasion to drive up to that bridge or close to that bridge on

(Testimony of Vern Kapphan.)

that morning. We drove pretty fair, there must have been 6 or 7 cars between us on the highway when we drove out there to the east of the bridge. There was some cars on the east side and some on the west side too. There was a Buick car in the north barrow pit, headed north. That would be on my right hand side as we were coming. I saw the cars in the vicinity of the bridge. There was another car right on the bridge.

It was a Pontiac. At any rate there was a car on the bridge itself. There were quite a few people there. There was two children lying on the bank on the highway. There was a lady there and I think there was a man laying there. There was a man and woman laying on the highway, or side of the highway, on the west side of the bridge. I did not see the people enough to recognize who they were. When we came up there in our car, we walked over. We left our pickup in line with the rest of them and walked on up—walked right on to the bridge. We stopped a minute or two there by the east of the bridge where the children were and where the Buick was in the ditch, and then I walked right on clear across the west side of the bridge. I never went off of the road. They said that there was a woman in the Buick, but I never went down to the car.

Q. All right. Then, when you went towards the west side of the bridge, did you come up to where this automobile was? [106]

A. Yes, sir, that's right.

(Testimony of Vern Kapphan.)

Q. Now, Mr. Kapphan, tell us where that automobile was as you walked up to it?

A. Well, it was pretty close to the center of the bridge. It might have been a little further to the east side than it was to the west side, but it was further south than it was on the north. I would say the front end of the car was over the white line, as we call it.

Q. Now, are you still talking about that car that was on the bridge?

A. Yes, sir, I am speaking of the car that was on the bridge.

Q. And its position with respect to the white line was that the front end was where?

A. The car was setting at a little angle. The front end, I would say, was over the white line. I don't know whether there is a white line right on the bridge or not, but it was setting far enough there is no doubt it, it was over half ways, because when Bill came with the ambulance, I took a hold of the fender which was laying out there and pulled it back, and several other guys took a hold with me, and I think we moved the car a little bit so he could get through with the ambulance.

Q. When you moved the car, which direction was it moved?      A. North.

Q. And before it was moved to the North, approximately what [107] portion of that Pontiac car was over the center line or on the south of the line?      A. The front end.

Q. The front end. Now, after you moved this

(Testimony of Vern Kapphan.)

Pontiac car at the time the group of you moved it, what did you do with respect to any part of the Pontiac car?

A. Well, there was some pieces of some car that we moved out of the road there, but I wouldn't know whether they were off of the Pontiac or whether they were off of the Buick.

Q. I see. What pieces were they, do you know?

A. Well, that is pretty hard to say, as far as that goes, but there was pieces broke off of either car, I don't know which car.

Q. Did you see the photographer there at the time you were there?

A. No, sir, he wasn't there while I was there that I seen him. [108]

Looking at Plaintiffs' Exhibit 4, photographs 3 of 4, I would say that that was the car setting on the bridge and compared to the picture after it was moved by the four men, we moved it straighter. We moved the front end over and picked the fender up so that he could go through. After the Pontiac was moved from the south side, there was somebody drove through there and the man that drove through was the coroner, Bell.

After they picked the bodies up, we started going through with the car, and I was on the west side talking with one of the neighbors and the boy came along with the pickup and I got in and we went on to town.

## VERN KAPPHAN

## Cross-Examination

I couldn't tell you right to the inches or feet how far over the white line to the south that the automobile on the bridge was when I saw it. I didn't measure it, no. There wasn't room enough for a car to go through there. That is why the traffic was held up. There wasn't room to go through until we moved the car. I don't know how many of us moved the car, there were lots of men standing around there, and I couldn't say particularly that I knew any of them that took a hold of the car outside of me. I didn't pay that much attention.

By the time I got down to the car there must of been fifty people there on the bridge.

I have lived in Saco, oh, thirty years. I do not know any of the persons who helped me move the car nor any particular neighbor right around close. There were two or three of them there, but I wouldn't say they helped move the car. Of course, the reason why I wouldn't say is because they was all elderly men. I say the neighbors I seen there, I wouldn't say they helped, although they might have. I don't know. The neighbors that I knew around there were McChesney and John Mangus. Mangus was driving his Studebaker; McChesney, a Buick. I would say the front end of the Pontiac was five or six feet away from the south rail before I moved it. It would be close enough that they couldn't get through with an outfit. Just impossible to drive a



(Testimony of Vern Kapphan.)

car through there until it was moved. After we moved it, I laid the parts back down on the road. That is as far as I did. I just moved them out of the road so we could get through with the ambulance. What I moved was right beside the Pontiac. I wouldn't say that there was a white line on the bridge and I wouldn't say there wasn't. I don't know.

Q. That is fair enough. Before the car was moved now, and directing your attention to Photograph No. 3 of Plaintiffs' Exhibit No. 4, will you tell us where that fender was—apparently that is a fender, isn't it, that I am pointing to in the center of that picture——

A. Yes.

Q. Where was that fender before you moved that automobile?

A. It was laying about right here (indicating), it was laying pretty close there, I would say, but I don't see how it could have been, though, after we moved it. We moved it and he went through with the ambulance, I am sure, before the picture was taken, because I didn't see Mr. Coles there.

Q. Well, your testimony is that——

A. We picked that fender up and he drove through there.

(Testimony of Vern Kapphan.)

Q. And then you picked up the front end of the car and moved it?

A. I didn't say we picked it up, we just shoved it over.



(Testimony of Vern Kapphan.)

Q. Did you see the condition of the left front wheel of that Pontiac when you shoved it over?

A. No, sir.

Q. You didn't. After you shoved it over, did you note [113] whether or not the left front wheel of that Pontiac gouged or marked the highway?

A. No, sir.

Q. You didn't. Well, possibly I can direct your attention to the left front wheel to some extent here to refresh your recollection. [114]

The Court: Is that about the position of the car as you left it after you moved it, as shown in Picture No. 3?

A. No, I think it was a little straighter than that.

The Court: He said he thinks it was a little straighter than that. When you moved it, was it over closer to the south rail?

A. It was setting so he couldn't get through. Right the way it is setting there, with the fender picked up, you could drive through there.

The Court: So, this car pictured in No. 3 is not in the same position that it was when you first saw it?

A. No, it is touching the rail here. I don't think it was touching the rail when we come there, I wouldn't say.

In picture No. 3 of the Plaintiffs' Exhibit No. 4, it appears that the Pontiac is touching the rail and it wasn't touching the rail when we came there. As to the markings on the bridge, I couldn't tell

(Testimony of Vern Kapphan.)

you whether either side was marked because I didn't observe the railings of the bridge.

Observing photograph No. 5 of the Plaintiffs' Exhibit No. 4, well, the front was smashed up but whether it looked exactly like that, we did not pick it up, we just slid it over and moved the stuff out of the way so he could get through with the ambulance. I did not look afterwards to see whether or not you had marked the bridge or the pavement and I don't know whether or not the left front wheel or the left front tire had been cut off the rim of the wheel so that the rim was resting on the pavement.

Q. Well, where was that fender that is shown in both Photographs numbered 3 and 5 of plaintiffs' Exhibit 4, where was that fender before you moved the car? [115]

A. Laying right alongside of the car, back here a little further, I would say.

Q. Well, you moved this front, you say, back?

A. Yes, we moved it back.

Q. And I think your testimony is, and I am directing your attention to Photograph No. 5, your testimony is that it was impossible for an automobile to pass between the south rail of the bridge and the front of this car before you moved it?

A. That's right.

Q. That was impossible, that is what I wanted to know. If you knew that a 1955 Buick drove through there, you wouldn't believe it, would you?

(Testimony of Vern Kapphan.)

Mr. Doepker: Just a moment now, that assumes a fact not in evidence. The Buick was through when he got there, the Buick was already through.

The Court: Sustained.

A. The Buick was through when I got there, Mister, and in the ditch.

Q. Well, then, you don't know whether the Pontiac was moved back south before these pictures were taken?

A. That Pontiac could have been moved a dozen times after them pictures were taken if he took them after I was there, which he had to do, because I wasn't the first man there. We had picked the people up, or someone else had, I didn't touch any of them, but they was picked up and went ahead into [116] town before we left there, and I didn't see Mr. Coles around there at any time I was there, so that car could have been moved after I left there, too.

Q. Now, directing your attention again to Photograph No. 5 of Plaintiffs' Exhibit No. 4, the Buick is in the ditch—I think you can see just a little of the back end of it——

A. That car was moved there after I——

Q. Well, just a minute, will you just—I am talking about the Buick here now.

A. Yes.

Q. It was in the ditch here, wasn't it, when you first arrived on the scene?

A. That's right.

Q. Yes. What kind of a car was parked at the head of the line there?

(Testimony of Vern Kapphan.)

A. I couldn't tell you that.

Q. You couldn't?           A. No, sir.

Q. Do you remember whether or not there was a car parked on the left side——

A. There could have been.

Q. Of the entry of that bridge?

A. There could have been.

Q. You don't know?           A. No. [117]

Q. Well, will you tell me whether or not you saw a green Ford station wagon there?

A. Yes, there was a station wagon picked somebody up there. I think it was a lumber yard man in Saco.

Q. The lumber yard man in Saco?

A. At least, a man had a station wagon there and picked some people up.

Q. I see.

A. But I don't know whether he was in the head of the line, or where he was. I don't know that.

Q. Is your son in the courtroom?

A. No, sir.

Q. Is he available to testify?

A. No, he went east with cattle.

Q. Did you see a small panel truck, laundry truck, at the east end of the bridge when you came up there?

A. No, I don't recall that. It could have been.

Q. You remember you said in answer to Mr. Doepker's question that there was a girl taking care of the two children?

(Testimony of Vern Kapphan.)

A. Yes, there was a woman.

Q. Do you know who she was?

A. No, sir, I don't.

Q. Mr. Kapphan, did you move the back end of the Pontiac?      A. I would say no.

Q. That wasn't moved? [118]

A. I would say no, not while I was there. This picture there (indicating), that car has been moved a lot since we first moved it, when that picture was taken.

Q. This car had been moved quite a lot?

A. Oh, yes, this car here was moved quite a bit since when we moved it. That has been moved since this picture was taken, I would say, unless it was like you boys was explaining, the width of it.

Q. You think the car was moved between this picture and that one?

A. Well, it looks that way, don't it?

Q. I don't know. You are the witness.

A. Well, unless it was like you were explaining the angle of it there on it, it doesn't look the same.

Q. It doesn't look the same to you?

A. No, I don't, unless you are setting on an angle like he was talking about, the angle of the lens of the picture.

Q. Was the automobile that you have been looking at in these photographs facing in the same direction when you first got there that it appears to be facing in in those pictures?

A. It was setting on an angle like that on the bridge.



Mr. Doecker: You have to stand up there and show it so the Judge can see.

A. It was standing on an angle on the bridge just about like that, I would say (indicating). It was headed about what [119] you would call west, I would say, I wouldn't know. [120]

## RAYMOND CHARLES HOYNES

### Direct Examination

My name is Raymond Charles Hoynes. I am a highway section man and I was engaged in that work on the 30th of August, 1955. My station was Malta, 14 miles east to Malta, and 26 miles west on No. 2, and I was working at the station for the highway department on the 30th of August, 1955.

I am acquainted with the bridge that is located toward the easterly end of Bowdion Lake and with respect to Malta the bridge is approximately 12½ miles (twelve and one-half) east and northeast of Malta. I had occasion to go over that bridge on the morning of August 30th, 1955, and on other days too, and I know the railings of the bridge enough to know something about their condition. When I came through on the morning of August 30th, 1955, and I know the condition of the railings on each side of the bridge, that morning and the direction of the bridge in that vicinity approximately runs east and west; and as I went out over the bridge that morning I noticed the railing on the south side or the north side as I went through.



(Testimony of Raymond Charles Hoynes.)

I can tell the Court that I observed both sides. We do every time we go over them bridges, it is part of our job to look out for anything unusual and on that morning I would say approximately 9 o'clock that I crossed the bridge going east and I went approximately a mile and a half to the end of my section east past the bridge and on that morning the south rail of that bridge were clear of any marks, they were clear of any markings with exception of a sliver off or something where it may have done it with a snow plow. As far as the railings and the boards that went along the south side of that bridge, they were free from any scuffing or splintering that would be noticeable to just casual observation and there were no paint scrapings on the bridge as I went over it that morning. When I returned from my trip about a mile and a half or two from the east, I saw this accident when we came up over the hill. When I say accident, I did not see the accident happen, I saw the result of the accident after it had happened. When I came upon this accident after it happened, then we just had the one vehicle. We pulled it off to the side of the road and went down to see what the accident consisted of. When I got there, I did see people around there. I mean that where the accident was, there were the people that were involved in the accident. We saw two little children on a blanket on the shoulder of the road right at the end of the bridge and on the other end of the bridge there

(Testimony of Raymond Charles Hoynes.)

was the woman laying on a blanket on the west end of the bridge on the shoulder of the road. I saw the cars that were involved in the accident, but I did not make too close an observation of the cars. I seen there was one in the barrow pit on the east end of the bridge and the other car was on the bridge. I just casually looked at the automobiles because there was quite a bit of trouble with traffic and I had to take over the traffic situation. There were several men walking around there and I saw a man walking around there that had apparently been in the accident and that was Mr. O'Keefe. He had blood running all down his face and he had a cut over his eye or some blood running down his face. I just walked past him when I went past the vehicle to get a bar out of our vehicle to try to open the door of the Buick.

When you direct my attention to picture No. 12 of Plaintiffs' Exhibit 4 and looking at the railing that appears on the right edge of the photograph here and I remember that railing that morning. The railing was not in that condition which appears in that photograph when I went through the bridge there that morning going east, but it was in that condition when I came back. I notice that there is a vehicle apparently that is at the east end of the bridge on the north side and I recognize it. When we came back from the east I noticed that vehicle shown in the picture. I couldn't say for sure looking at picture No. 13 of Plaintiffs' Exhibit 4, but as I said before, the bridge was splintered up some, maybe due to the snow plow or something that

(Testimony of Raymond Charles Hoynes.)

rubbed it, but I don't know, I don't think there was anything on that lower railing before the accident. At any rate, I did notice this middle railing after the accident and did see a condition such as shown here. I direct my attention to photograph No. 3 which is looking west and picture No. 4 of Plaintiffs' Exhibit 4. I notice the railing along the north of this picture now. Picture No. 4 of the Exhibit 4, we are looking east and I observe a car on that bridge at the time the picture was taken and with respect to the railing along the north of that bridge, I did not notice any splintering or paint scratches on the north side of the bridge.

Having my attention directed to photograph No. 7 of Plaintiffs' Exhibit 4, I look at it and notice that the direction that we are looking in that picture is west and I observe a sign that appears to the right of the highway which I am familiar with, and on that morning as I went east, the sign was there and it had been there for sometime before that date and I know what the sign said. It says "Narrow Bridges in the Next 10 Miles." I had passed over this area a good many times in my work and there is nothing to obstruct the view of a person approaching along that road. There is a little rise in the road further down, but you can see that sign for several hundred feet and by the shape of it, I know that you know that it is a warning sign. It is triangular and it is set in a triangular position being a warning sign. It is a standard

(Testimony of Raymond Charles Hoynes.)

sign and a warning over the highways. At the time I arrived there they were removing one of the children. They put the child on a blanket out on the east end of the bridge on the north side and this other woman they had carried her up to the other end there and she was lying on a blanket on the shoulder of the road there. I also saw a woman in the red Buick on the east end of the bridge. I went up pretty close to the car and I saw her. She was crumpled up under the steering wheel of the car and was still alive at that moment, but we couldn't get the car door open. Some of the boys were trying to open the door and they couldn't get the door open, so I returned and went back to our truck to get a bar to open the door. At the time I first saw her, which was after we pulled up there, the children were on the shoulder of the road and another lady was being taken over to the west side. That lady was still alive.

With respect to the south side going back to the south rail, I will tell the Court there was no paint smudges or spots of paint on the south rail that morning when I went out and that when I came back they were there and the color of those paint smudges were red.

Calling my attention to Plaintiffs' Exhibit No. 21 which is a stereoscopic color picture, I recognize it. It looks like the north end of the bridge. The north side of the bridge, let me look again, yes, it is the south side looking at it from the east.

In Plaintiffs' Exhibit No. 7, it was taken at the



(Testimony of Raymond Charles Hoynes.)

same time there but I don't exactly recognize all those markings and someone standing there. I am familiar with the section from the east end of the bridge on the south side back 6 or 7 posts. The last time I paid attention to them was 3 or 4 days ago and there are paint smudges there at the present time and I have been familiar with those paint smudges about a year with reference to the accident, and the first time I saw them with reference to the accident was the morning of the accident.

#### Cross-Examination

When I came over that morning about 9 o'clock, I was in a highway truck and I travel about 30 or 35 miles per hour just going along the road which we were on that morning. I drove over the bridge that morning about 30 or 35 miles per hour just about. I was not making any particular minute inspection of the bridge as I went by at that speed. Just to see that there had been no accident or anything and there wasn't anything particularly unusual about it that morning.

Three or four days ago when I looked over the road, when I examined the bridge, I was just looking over the road just the same as we have been and there were some paint smudges still there.

When you asked me if I wouldn't say that all the paint smudges on the south rail of that bridge, at the present time, had been there ever since the accident, well, I couldn't prove that it was, but I haven't seen any different from the time of the

(Testimony of Raymond Charles Hoynes.)

accident up till now, and refreshing my recollection a little as to whether there is orange paint smudges on the south rail of that bridge at the present time, well, you could call it orange if you wanted to maybe, red paint rubbed along on white paint would make a sort of an orange paint. White on red will make orange pretty much so. This particular paint that I saw on the morning of the accident immediately after the accident, I can't say if there was orange, but there was red paint on the bridge. As to the particular paint that I saw on the morning of the accident, immediately after the accident, I can't say that it was orange, but there was red paint on the bridge.

Q. This particular paint that you saw the morning of the accident, immediately after the accident, was it orange in color?

A. I can't say as to that, if there was orange, but there was red paint on the bridge.

Q. There was some red paint on the bridge. Now, do you know whether there was any orange paint, or orange colored paint on the bridge somewhat to the west of where this Pontiac was when you were there that morning?

A. There may be, yes, there is some sort of orange colored paint on there, all right.

Q. Do you know how long that has been there, the orange colored, as distinct from anything that might have been red?

A. Well, I didn't, as I say, think that there was



(Testimony of Raymond Charles Hoynes.)

any difference. With the red on the white stretched along the bridge, I might call it all red or orange.

Q. Well, the paint that you saw the morning of the accident about at the sixth or seventh post, the sixth post on eastward, was that red or orange?

A. Red on the posts to the east.

Q. And if there was any orange, splotches of paint, on westerly from that——

A. Well, if you call it orange, yes.

Q. Well, I am asking you if there is any orange, do you know?

A. I don't know it is orange paint that is on there, no.

When counsel showed me Exhibit No. 7 as to my recalling, the bridge didn't appear to be that much chewed up, well on that little picture here where they had that slivered off the bridge, that is I say, as it shows in that. It didn't look like there was a big sliver off of that railing. It don't show it there like it does in that little picture, referring to Plaintiffs' Exhibit 7, and what you were getting at, this picture makes it look as bad as it was and maybe a little worse to just look at the picture. The damage is accented. The sleepers on the bridge or the lower bridge timbers is 6 by 12, 6 inches wide and 12 inches deep.

When I was coming back from my assignment that morning at the end of the route to the east, my or something like that off the road, but I would idea is that we may have stopped and thrown a rabbit say we were back there about 9:20. We drove a mile

(Testimony of Raymond Charles Hoynes.)

and a half to the east and came back, and we may have stopped, and when I got there there was somebody else there. There was about, I can't say for sure, but there was about 3 cars, probably 3 vehicles on the east end of the bridge, maybe as many more on the west end, 2 or 3.

I stopped on the east end of the bridge behind those vehicles that were there. I can't describe the vehicles now, but I believe there was a laundry panel outfit there, but I wouldn't know the color of it. I don't recall another vehicle to the left when I stopped near the east end of the bridge, and I don't remember that. As to whether there was a slight, young girl there about 20 years of age with a kerchief over her head, I can't say, I didn't pay enough attention to it. I think I went across the bridge first, or part way across anyway to the Pontiac car, and then turned around and went back and saw this woman in the car and they couldn't get the door open so I went immediately back to our truck to get a bar to pry the door open. I did not see anyone in the Pontiac when I went to it, the people were already out of the Pontiac, at least I didn't see anyone in it. I wouldn't say that they were out, but I didn't see anyone in it. When I got to the Buick, there was a woman slumped over the steering wheel, and she remained in that position. I was there when Mr. Coles, the photographer came, and I think she was still in the same position at that time, and I say that when I went to get the bar, the woman was alive. I could see by her eyes that she

(Testimony of Raymond Charles Hoynes.)

was alive, her eyes were open, but she did not speak to me, she may have moved enough that I could see she was. Well, I didn't see her move, but I see she was alive. She may have moved a little, like I said, but she did not speak or make a sound that I know of.

The narrow bridge signs which appear in picture No. 4 of Plaintiffs' Exhibit 4, that was the only sign close to the bridge, that was the only sign that was there then, that's right. That was the only sign on the 30th of August. There was a sign some miles west, no sign to the east besides the sign that was there. There was no sign immediately to the west of the bridge. From Malta to the bridge going east from Malta to this bridge on the 30th of August, there weren't any narrow bridge sign facing the traffic coming from Malta towards that bridge, not at the bridge. There were signs between Malta and the bridges saying "Narrow Bridges the next 10 miles," and there were no signs to the east with "Narrow Bridges the next 10 miles." This is the first sign that you see coming from the east, but there were signs between Malta and the bridge with the same legend on the south side of the road going east. There was a sign, not signs, with the same legend, "Narrow bridge next 10 miles."

When I stopped after this accident had happened, I made an inspection of the south rail on the bridge. I looked at the north rail and as you show me photograph No. 3 of Plaintiff's Exhibit 4 in this case, the mark of some sort near the post above the right rear bumper of the Pontiac, or the automobile that

(Testimony of Raymond Charles Hoynes.)

I see sitting there, I did not observe that gouge on the north rail of the bridge. Well, I just looked at it, the north side as a whole, but I didn't notice any particular damage that was done to it, not to any extent. I just didn't observe any particular damage there, as far as any damage to any extent, because there was no damage to the bridge that might interfere with other traffic or anything of the sort, and that is what I was looking for—damage to the bridge that might interfere with traffic. And there is nothing on the south rail of the bridge that would interfere with traffic, but I did observe it more closely. I wouldn't say the mark on the north rail of the bridge wasn't there.

Q. And I want to call your attention, do you see any of those paint smudges in this picture, do you see pictures of those paint smudges that you have been telling us about?

A. No. I see a little slivers on top of the bridge there, and like I say, they may have happened from the snow plow or something else. I don't see no paint smudges. [202]

## PHILLIP VERT

### Direct Examination

My name is Phillip Vert. I work on the highway and I was an employee of the highway department, doing work on the highway in August, 1955. My station was at Malta and we worked east 14 miles, and about 26 miles west. Our duties were generally maintaining the highways—keeping the roads clear and



(Testimony of Phillip Vert.)

one thing and another of any debris that might interfere with traffic—and patching and general repair work. I recall the morning of the last day of August, or I mean the second to the last day of August, August the 30th, 1955, and I was working on the highway that morning. I was working with Mr. Hoynes. We left Malta shortly after eight, and I know this bridge that is over at the easterly end of Bowdoin Lake, and I am familiar with the particular bridge upon which this accident occurred that I have listened to testimony concerning this morning, pretty much so, and as we went out there on that morning, we passed over the bridge, we were going east. We did observe the railings of those bridges along there as we went along. We don't pay too much attention to them if they are not slivered up sometime along that line. If they are not badly slivered, you wouldn't pay too much attention to them.

On the morning in question, as to the condition of the boards or railings along the south side of the bridge there that day, as far as I know, they were pretty much the same condition they had been right along. There was nothing unusual about it. I didn't see any bad splintering or any smudges of paint on at that time. As to how long we were away from the bridge after we passed out east that morning, I would say we drove down to the end of the section, probably 15 or 20 minutes, about a mile and a half from the bridge, and then we got down to the end of our station and returned, and on our way back

(Testimony of Phillip Vert.)

as we came over the hill, we could see cars—see the wreck there where it had happened—there were several cars there by that time, and by the time we came over the hill, there was when we noticed the wreck and the people around there. On the morning in question, generally speaking, as far as I know, there was nothing unusual about the bridge as we went out. I didn't see any bad splintering or any bad smudges of paint on at that time. And after we got down to the end of our section, we returned, and on our way back, we came over the hill and we could see the cars and the wreck where it happened. There was nothing there when we went over. We pulled our car off to the north shoulder, and at the time we pulled over on the north side of the highway there were two or three cars on that side and some on the other end, on the west end of the bridge.

Q. But the cars that you saw there as you came up there after going down to the end of your station and back, were they all on one side, or all on the northerly side, if you remember?

A. No, I believe there was one on the south. I couldn't swear to it, but I believe there was one on the south side. [217]

I didn't pay much attention to what it was and I didn't recognize any of the vehicles as I came up there that morning. As we came back to this place, we did not take a look at the bridge at once, because I was too much interested in taking care of traffic and one thing and another. I didn't pay too much attention to the bridge at that time. I saw a car off



(Testimony of Phillip Vert.)

of the road as I came up, the Buick, I went down to the Buick and as I came down to the Buick, I went down to see if there was anybody still left in it, and I seen this woman was still in it. The woman was seated under the wheel and she was sitting up. She seemed to move just a little as I went down to the car. She was pretty much hunched over the wheel. I didn't speak to her, I felt her pulse and I couldn't feel it. Then I walked back up to where the children were. They were laid out on the shoulder of the road, and I did not see the woman change her position while I was there. She remained in the same position. Then I went through the bridge to the other end, and there was a man and a woman laid out there. As I went by the Pontiac car, I didn't look in to see if there were any people in there. The children that were laid upon the shoulder of the road were brought in town with a station wagon. It was a station wagon of some kind, but I don't know who the operator was.

After the accident, I noticed paint scrapings on the bridge. There was paint pretty much in the middle of the bridge where the accident happened, and it was red paint, and the color of the Buick was red.

#### Cross-Examination

Yes, I think the children went into Malta in a station wagon. I was there when that station wagon went across the bridge. The station wagon went through. As to whether or not the station wagon was

(Testimony of Phillip Vert.)

the laundry panel delivery truck, I could not say. There was a laundry panel truck there, but they were in that or a station wagon, I couldn't say. The color of the station wagon was something of a purple color. I believe something along that line, and the laundry panel was purple and there was also a station wagon there, and I don't just remember what the color was, it seems to me that it was a light color, that is about all I remember about it. The vehicle that was parked off to the south, or on the south side of the road on the east side of the bridge, I didn't pay any attention to it. I don't know whether it was green or what it was, and when I went down to the Buick, the door was jammed. The left hand door was jammed. There was nobody on that side of it when I went down there, on the left hand side of it. There was somebody on the other side of the Buick, but I just don't remember who it was, and that was at the same time that I went down to the Buick. The movement that I saw on the part of the woman was just a (demonstrating) it could have been, it looked very much like it. The car was not being touched or moved by other people around there. There was nobody trying to get in the right door. There was somebody on the other side that said something about that being jammed, but I didn't pay much attention to it, and that was at the time that the woman moved.

## CHARLES McCHESNEY

My name is Charles McChesney and I live at Saco, Montana, and I follow the occupation of ranching. I have one ranch 12 miles northeast of Saco, I call it, and one is 55 miles southwest of Malta. I have been engaged in ranching operations almost 40 years in this vicinity, and I homesteaded near Saco, and I have been active there ever since. My work requires that I drive back and forth between the two ranchs occasionally, and I did have occasion to drive or start a trip from my home in Saco to the ranch south of Malta on the 30th of August, 1955. I traveled over Highway No. 2 to Malta. As I was traveling towards Malta, I came upon an accident and this accident was at a narrow bridge on No. 2 highway north and a little east of Bowdoin Lake, between Malta and Saco.

When I arrived there, there were 2 or 3 other automobiles ahead of me. I think I was even the third or fourth car there. I came from Saco towards Malta towards the east end of the bridge and I imagine that I must have been close to a hundred feet from the east end of the bridge behind either 2 or 3 other cars. We were held up there, but when we crossed the bridge later, we drove on the south side of the highway going west. With relation to the bridge, I stopped in the line of traffic back of the bridge, and it would be east of the bridge and about a hundred feet from the bridge, I would say.

As I arrived there, I got out of the car and walked over to the first car and noticed Mr. O'Keefe's chil-

(Testimony of Charles McChesney.)

dren lying on the bank under a blanket, and I think he was lying alongside of them at the time. The car that I noticed was a red Buick, and it was just east of the bridge with the front end of it hanging over the embankment into the barrow pit. I observed the other car that had figured in the accident, or been involved in the accident, and it was a Pontiac car. The Pontiac car, as I came up there, was setting across the center line, possibly the front end of it, I would say, a little more than three feet across the center line of the marking on the bridge, facing to the southwest. The Pontiac was across the center line to the south facing in the southwesterly direction, and there was not room, when I first came up there, there was not room to pass between the south railing of the bridge and the Pontiac automobile because the Pontiac was too far over the center line facing to the southwest and there was not room enough for another car to pass it. While I was there there was some change made in the position of the Pontiac automobile. Four or five men got a hold of the front end of the Pontiac and skidded it over so that traffic could go by, and after that was done the traffic got by through there while I was still there. I didn't remain there. I think I took my turn going across the bridge after the Pontiac had been moved.

Looking at Plaintiff's Exhibit No. 4, picture No. 3, I look at it and that appears to be one of the vehicles involved in the collision. It is the Pontiac. I observe a portion of an automobile lying to the

(Testimony of Charles McChesney.)

left of the front portion of that car in the roadway there. I was there when that portion of the automobile was placed there. It was placed there so that they could take a picture of the vehicle. I observe picture No. 2 of Plaintiff's Exhibit 4 and I recognize the other vehicle involved in that accident. It is the Buick automobile that was involved in the accident and it is in the position approximately it was when I came up there.

### Cross-Examination

Mr. Doepker called my attention to a portion of the vehicle which appears to the south of the Pontiac in picture No. 3 of Plaintiff's Exhibit 4. When I first came up to the accident, as near as I can recall, that portion of the automobile was lying over here, and it was taken out for the ambulance, not the ambulance but the panel job from Glasgow to take Mr. O'Keefe's children to the hospital, and then it was put back there for the photographer to take the picture. As near as I can remember, the part of the automobile was lying right close to the railing, right close to the bridge railing, about opposite where it shows in picture No. 3. I wouldn't say positively as to that because those are some of the minor details that a fellow wouldn't pay particular attention to, but I remember very distinctly that being moved. I don't remember who moved it. I remember one man who helped move the car, but I did not participate in the moving operations. But I observed them, the moving operations. I think there were 3 or 4



(Testimony of Charles McChesney.)

men and I think they didn't lift the front end of the Pontiac, they just skidded it over. Got down low with main strength. I suppose you would call it that. There were four men, four or five men, I don't recall just how many but there was one man on the job that I knew. As to whether they took hold of the bumper or, well, no, there was no bumper there. The bumper was pretty badly bent up. They took a hold of most anywhere they could get a hold of the vehicle, and I didn't observe whether some parts would bend or give. I didn't observe that. When they moved the vehicle, I was on the east side of the bridge, probably standing alongside of my car. It would be about a hundred feet from the place where the vehicle was located so that I couldn't see the front of the Pontiac when that moving operation was going on, but I am sure that the Pontiac was about three feet over the center line, but I did not measure from the center line, that is an estimation on my part. Of course, there is actually no center line on the bridge. I was estimating by eye the approximate distance. I think that the bridge is approximately 20 feet wide. I am sure it is quite narrow. It is more narrow than the paved portion of the highway in that vicinity. The pavement narrows down to that bridge. As I said, when I first came up there there were, I just recall how many, I know there was just a very few cars there, I was either the third or fourth car there, I am sure of that, and one of those ahead of me was a laundry



(Testimony of Charles McChesney.)

panel. I couldn't identify it, that is, I couldn't identify who it belonged to.

Q. When you were there by the children lying on the highway, did you observe a young girl there, a relatively young girl, about 20 years of age?

A. I observed somebody that somebody reported was a nurse.

Q. Actually there were two girls there, were there not, women?

A. Well, there was quite a lot of folks there, you know, before it was over with.

Q. No, I mean when you first got there. [261]

A. No, there were very few people there when I first got there.

Q. Were there two ladies there at that time?

A. I don't recall whether there was two or not. I know that panel truck was there.

Q. Do you know whether there was a green Ford station wagon?

A. No, I don't know whether there was or not. I don't recall that.

Q. Did you notice any vehicle parked on the south side or shoulder of the highway to the east of the bridge?

A. No, I don't recall that either.

Q. You don't recall it? A. No.

Q. You don't know whether it was there or not?

A. No, I don't recall it. [262]

This laundry panel went through after the Pontiac was moved. It had to be moved before the laundry panel went through. I am only speaking of the panel laundry truck. The Pontiac had been moved

(Testimony of Charles McChesney.)

before it went through, and the piece of the automobile that I referred to also had been moved, but I saw the piece of the automobile put back for the purpose of taking a picture, but I don't recall who put it back. There were a lot of strangers there, mostly all the traffic on that road is tourists.

## GENE SEEL

### Direct Examination

My name is Gene Seel. I reside in Malta, Montana, and I have lived there about 15 years. I was residing in Malta on the 30th of August, 1955, and at that time I was employed and worked for the Chevrolet Garage in Malta and it is known as the Malta Standard Garage. In my capacity of working for that garage as a part of my employment I drive a wrecker and I was called to the scene of an accident on that morning. I went out about 12 miles or so east of Malta to reach the scene of the accident, and when I arrived there, well, there was quite a line of cars on both sides of this bridge and they were tied up there because this Pontiac was setting on the bridge and the Buick was sitting in the barrow pit on the east side of the bridge. I have some memory of the position of the Pontiac on the bridge at that time, and to the best of my memory, the Pontiac was sitting cross-ways on the bridge facing southwest. There was just barely clearance for a car to get through between the Pontiac and the south rail-

(Testimony of Gene Seel.)

ing of the bridge, and when I speak of the south railing of the bridge, I mean the main railing.

Well, we had to move the Pontiac before I could get through, but I understand that the ambulance did get through there. When I arrived there there wasn't any of the injured laying around. Whoever had been hurt in the accident had been removed. I met them on the way to town. I met them as they were going to the hospital.

Observing picture No. 11 of Plaintiff's Exhibit 4, looking at it, it is my wrecker that is shown in that picture. The vehicle that has the diagonal stripes on it, that is set in a position directly in front of the Pontiac. At the time I was engaged in moving or getting ready to move the Pontiac off the bridge so the traffic could get through, there were several trucks and large outfits there that had to wait for the Pontiac to be moved. In moving the Pontiac, we hooked a cable on to the under carriage in the front of the car and slid it sideways until we could pick the front end of the car up. In sliding the Pontiac sideways, we slid the front end of it to the north, and after we slid the front end to the north, we got a chain to the under carriage on the front and towed the car to the barrow pit on the south side of the road and left it there. In our operation in lifting and taking the Pontiac off the bridge, it may have left cable marks or something like that on it, but it wouldn't damage it in any appreciable amount, and it would not dislodge the bumper or any part of the front end of it, and I am sure that

(Testimony of Gene Seel.)

that was not done in our operations. After we hooked on to the Pontiac in the manner that I have indicated and lifted it up, the front end, I put the Pontiac down through the barrow pit and left it sitting there, turned around and drove across the bridge until I was behind the Buick.

In picture No. 8 in Plaintiff's Exhibit 4, I recognize that roadway there and I see the Pontiac after it was pulled through the bridge. The Pontiac is sitting on the south side. This would be the south side on the south side of the road. This picture is looking east and we pulled the Pontiac off the bridge down through the barrow pit, down to the south side of the road here, and that is the Pontiac sitting there, and the Pontiac is indicated to the right of the picture here. That is the manner that we carried it through the barrow pit and then up on the shoulder on the other side of the barrow pit and pulling the Pontiac that time, we pulled with the same cable that we used to lift it. It was very easy to move after we lifted it. We did not damage the Pontiac in any manner in moving it there, or change the front end of it. After we left the Pontiac in the position that I have indicated, we went back to the Buick.

Looking at Plaintiff's Exhibit 14, Exhibit 4, that is the Pontiac after we moved it off the road. Looking at Plaintiffs' Exhibit 14, Exhibit 4, the chain shown in the picture, I imagine it is ours, I don't know for sure, but I imagine that it is. The cable runs around the front cross member behind the wheel. That is a chain with a ring in the center and

(Testimony of Gene Seel.)

hooks on both ends and one is hooked on the left side of the car, and one is hooked on the right side of the car. When I observed the Pontiac and the bumper and the position it is in in the picture and that condition that appears in the picture, I would say that is the way it looked on the bridge. After we got the Pontiac in position that it was, I pulled over behind it, stopped and got out, and Mr. Bell asked me if I would help him move the body. Then we went over there on the east side of the bridge. We left the west side and went over to the east side and by that time the bridge was clear of vehicles. We went over there and found the Buick on the east end, nose down, into the barrow pit. It was down in the barrow pit and at the time, someone was working around the Buick car. I had been over to the Buick before, when I first got there and they were waiting to get—when I first got there Mr Bell asked me to help him get the body out and we couldn't move it—couldn't get it loose. We couldn't get the body of the deceased woman out of the Buick. Her legs were pinned in under someway under the dash. The dash had been pushed down on to her legs and it was impossible to dislodge her in the position the car was, so we tied on to the back of the car so that it would stay stationary while they lifted the cowl portion of the car off of her legs.

Looking at picture No. 2 of Plaintiff's Exhibit 4, the tail end of our vehicle is on the highway, and that is the tail end here shown at the right of the picture. There is a man apparently hanging on to some kind of a cable, standing over across the bar-



(Testimony of Gene Seel.)

row pit, and there is a gentleman apparently in a light colored shirt. I had a hold of the end of the cable there getting ready to fasten it in the car and this is a picture of me here. I am looking away from the photograph, however, and I have a hold of the cable there.

With respect to fastening on to the Buick, we fastened the cable, that is—well—the cowl and body is shaped a lot different. The windshield is a wrap around type windshield, and the windshield was out and, of course, this door was open by then and we ran a cable around this pillar, curving pillar that comes down. We wrapped the cable around there and, of course, he was up above it enough so that when he tightened on it, it didn't take too much strain and it lifted that section of the car up and we fastened the cable around the post that is comparative to the panel, the post of the Buick. Then we ran this wrecker up further and hooked on to this back bumper and just set it there stationary, then he tightened this cable until it lifted enough on there to lift the dash. It only lifted it, I imagine a couple inches until we could free her legs. I used my wrecker as an anchor to hold the Buick on the rear end and fastened it to the rear bumper and I also fastened the cable around the cowl of the post. Mr. Long was running the other wrecker and he tightened the cable necessary amount to lift it, and after the cable was tightened to that extent, we were able to remove the body of the deceased woman. In

(Testimony of Gene Seel.)

this operation, I don't think that there were any parts broken or any parts changed of the Buick. I don't think you would be able to see any change at all because when they took the slack in the cable, the car settled back almost in the position the dash had been in before. After the body was removed, I pulled the Buick out of the barrow pit.

Looking at picture No. 9 of the Plaintiffs' Exhibit 4 at the time the picture was taken, I don't know if we were moving or not but it looks like we have already hooked on to the Buick and getting ready to take it out of the barrow pit. In order to remove the Buick from the barrow pit, we hooked on to the front end and pulled the car out to the east. I don't remember how far, but to a spot where you could get back on the highway with it. We hooked onto the under carriage on the front end here and picture No. 1 shows the Buick down in the barrow pit, and the cable that I talk about was fastened right around this windshield pillar.

After the body was removed, we got our car in a position to pull it out—pull the Buick out and fastened it onto my wrecker.

Looking at picture No. 15 it is still attached to my wrecker in that picture. During the operation and carrying it from out to the scene of the accident to the place where this picture was taken, as to doing any damage to the vehicle or changing the front end or the damaged side in anyway, well, it may have settled a little, the bumper may have raised a little from the weight of the car, but it would be very

(Testimony of Gene Seel.)

little, you wouldn't notice the difference I don't believe in the picture and you wouldn't notice the difference on the car after you got through moving it. We did not in anyway pull or distort the front end of the Buick in our operations. In this picture it is brought to our garage there in Malta. After that date, it was placed or stored, well, we have two buildings joined together, one, we use for most of our garage work, the other for storage and it was put in the old building. It was backed into the garage with the wrecker and then it was moved over onto the spot where we stored it with a floor jack and in that operation we did not distort or change the Buick in any way.

I was around there until the time the Buick was moved. I was there all the time. There was no work done on the Buick of any kind. It was put in the stall and left there and the car was finally sold to the Buick garage in Malta. As far as any of these photographs that we show are concerned, the car was in the same condition that it was out there by the bridge. It is in the same condition.

Looking at Plaintiffs' Exhibit No. 11, that is the Buick sitting in the garage. That is the position in which it was placed, and as to the side of this Buick with the markings that appear to be on it, to the best of my knowledge, those markings are white paint markings and scraped metal. I mean the paint was scraped off down to the metal. That is on the right hand side of the Buick car and this is the Buick that was involved in this accident. The pho-

(Testimony of Gene Seel.)

tograph correctly shows it as it stands there in that position.

With respect to Exhibit No. 12, I recognize the photograph from a different angle. It is the same car and the same place, and it is the same side of the car. With respect to the markings, scrapings and paintings, it is the same thing. That is the condition in which it was brought in. There was no scrapings or markings put on there in our operation.

Looking at Exhibit No. 13, that again is the right side of the Buick sitting in the same place. The photograph is taken in different angles and it shows correctly the side of the Buick as it set in the garage there and those markings were on there when I went out to pick it up out of the barrow pit and it hasn't been changed in any way as it was in the barrow pit as far as those markings are concerned.

Plaintiffs' Exhibit 14 is a closer close-up picture of the Buick car. It is a section of a right front fender and a right front door and I recognize the markings that appear upon there. There are scrape marks, I guess you would call them. They are white in color. Those were there when I picked the car out of the barrow pit and was not added to or detracted from afterwards.

As to No. 15 of Plaintiffs' Exhibit, that is the left rear or the right rear section of the rear fender on the same car and the markings appearing on that I recognize, there are the same markings that are on there. There are markings with white paint



(Testimony of Gene Seel.)

and bare metal and they were on the Buick when I went down in the barrow pit and got the car out of there. They have not been added to, detracted from or changed in any manner and the picture was taken in the garage.

The Plaintiffs' Exhibit 16 is the right side of the front section of the front door and a section of the rear door and I recognize the markings that appear on the automobile on the right side there. They are skinned spots on the right side that again show white paint and scraped bare metal, and those markings were on the Buick when I went down to pick it out of the barrow pit. There has been nothing added to it or changed in any particular while it was here in the garage. I don't remember exactly when this car was moved from the standpoint of the Standard Garage but it had been there a good number of months and I worked around it every day and saw it during that period of time. Some of the pictures that were shown to me showing the right side of the Buick car show the car with something under the left side to make it sit up in the proper position. I believe it was a cement block under the front end. You see, we had to set something under there to be able to get out our jacks from under it after we put it in position. For example Exhibit No. 11, I believe, almost just off of the center under the front end there was, I believe, it is a 8-inch pumice block set under the member to hold the car up there until we got our jack out.



(Testimony of Gene Seel.)

Looking at a stereo three dimension slide, a colored photograph of the front of the Buick automobile which has been marked Plaintiffs' Exhibit 9, upon examining it and looking at it, I recognize it, yes, that is the front end of that same Buick sitting in front of our garage down there. The photograph was taken the same day the accident happened and it correctly depicts the front end of the Buick in color as it existed at the time it was down in the barrow pit, and it was brought in in that position into the garage. Of course, the Buick being held up by the chain of the wrecker will change it from the precise situation that the Buick was in right after the accident, it is possible, you know the car didn't set level without something holding it up. The picture shows the left hand side high and the right hand side low. I believe without the chains or anything, it would probably be just the bumper and stuff would be almost on the ground on the left hand side.

Looking at Plaintiffs' Exhibit No. 10 which is a stereoscope slide it shows the front end and left side of the Buick and it stands in the same spot in front of the garage and with respect to its being in the same condition as it was when it was out there at the scene of the wreck it is in the same condition with no changes.

(Testimony of Gene Seel.)

### Cross-Examination of Mr. Seel

As to whether or not I examined the inside of the Buick automobile while it was in the barrow pit out east, I was in it but I never examined it. I saw some articles of clothing and beer bottles, I don't recall what all was in there. I don't remember seeing a case of beer bottles, there were several empty bottles on the floor. I don't recall seeing a case though. I looked in the trunk and there was a case in there but it wasn't a case of beer, it was a case of bottles, or a part of a case of bottles. I never seen any full bottles. I never went through it, there may have been. I believe there was only one case of empty beer bottles in the trunk.

Looking at Exhibit No. 14 of Plaintiffs' Exhibit 4, I looked at the picture a few minutes ago and I note that there are chains tied around the front bumper. There is one chain around the back bumper or the front bumper back bars, the attaching bars, and there is also the other end of the chain is fastened around the front cross-member. Looking at the manner in which the chains are fastened or wrapped around as shown at the left-hand side of the picture and that it follows across the front of the automobile as shown in the photograph and it appears near the left front wheel of the automobile, and that is one chain going around and the hook goes back and it's hooked in this side, the chain goes around through the bumper

(Testimony of Gene Seel.)

over the back bars and comes out and is hooked here (indicating). As to whether it caused the bumper or any part of the front part of the Pontiac to move, putting that chain on it it may have raised the—I don't know which side it would be, the right side, the right side of the car, these back bars, but it is hooked far enough back that it raised it very slightly. This chain is hooked around the main cross-member on the front of the car and that wouldn't change the front of the car at all. Looking at the same photograph, condition of the tire on the left front wheel of the Pontiac, it was flat. As to whether it was actually torn, I don't remember how it was. I know there was no air in it. As to the rim, I don't recall whether or not the rim was bent. In any event, I feel that the front of the bumper appears the same in the later pictures as it appeared in photograph 5 of Plaintiffs' Exhibit 4, as to the Pontiac. While it is a different angle, it looks like it would be the same to me. It appears the same to me, yes, and I don't think that moving the Pontiac from that position over to the barrow pit up to the position it is located in in photograph 14 would have changed anything at all. The Pontiac was moved, well, so I couldn't get through and there was, I know, I don't know how many, there was quite a line of traffic waiting to get through and as soon as they had the pictures and it was clear, why we moved it so that I could get through and so the rest of the trucks could get through. An ordinary passen-

(Testimony of Gene Seel.)

ger car could squeeze through. An ordinary passenger car could go through but a truck couldn't get through until the Pontiac was moved.

Looking at photograph No. 3 of Plaintiffs' Exhibit 4, I notice the brig or crease in the top of the Pontiac about the mid-section that I don't recall seeing it before, no. I didn't have occasion to look at the frame of the Pontiac directly below or approximately below that crease or brig. I don't know whether the frame of the Pontiac was broken, I have no idea and I don't know whether it was bent at that point, or what point it might have been bent, I don't know, I never looked under the Pontiac.

### WAYNE LONG

#### Direct Examination

My name is Wayne Long. I am employed by the Malta Motor Company in the capacity of manager, service manager, manager of the service department. In the course of my work during the past couple of years, on occasion, I drive a wrecker for the company. On the 30th of August, 1955, on that day my firm was called to a wreck that occurred on the highway. It occurred approximately 14 miles northeast of Malta on Highway No. 2, and with reference to the bridge that was there, it was near a bridge and I am familiar with the bridge at the easterly end of Bowdoin Lake and that's the bridge in question. After we received the call on that day,

(Testimony of Wayne Long.)

well, when I arrived at the scene the traffic was quite heavy on each side. I was flagged through the bridge and instructed to go up into a field and circle back on the north side of the Buick. So by the time that I got there, there was a place for you to go through to get to the Buick. I went through a field further east and came back to near the Buick. I was instructed to back in as close as I could up to the fence, north of the Buick, so that I could run a cable out and attach it to the Buick in order to release the strain that was causing the victim to be pinned in the car.

Observing picture No. 12 of Plaintiffs' Exhibit 4, my outfit appears in that picture and it's at the extreme left-hand side of the picture on the north side of the highway, so that looking over one of the rails on the north side of the bridge, you see the end of my wrecker and there is a cable dangling down off of a pulley and that is the cable which I refer to. I received assistance by someone at the end of the cable. I was required to stay in the wrecker and operate the winch and someone brought the end of the cable back to the Buick and I attached it. The opposite end of the cable was attached by some other person.

Looking at picture No. 2 of Plaintiffs' Exhibit 4, I recognize it to the extent that I still in the wrecker operating the cable and I believe that Mr. Seel is near the left front side of the Buick. I don't recognize the gentleman in the picture that is hanging on to the cable. In order to tighten



(Testimony of Wayne Long.)

up that cable, there is a power winch that is directly attached and applied by transmitted power from the motor and it has to be operated from inside the cab. I had to direct the pull on the cable from the cab. I was operating the cable by having signals given to me and as soon as I had pulled near enough so that it would release, and the idea was that as soon as I had pulled near enough so that it would release the victim in the car then I would stop the cable and hold it steady. After that day I had occasion to do something with the Pontiac car. After the cable was released from the Buick, I went through two gates back onto the highway east of the bridge, came back and crossed the bridge and went down into the barrow pit over on the south side of the road where the Pontiac had been placed and I picked it up with a wrecker and removed it from the scene, and in that operation this Pontiac car, I found the front end of it was in such condition that you could hook onto it, and I hooked onto it and lifted it up and brought it to the Malta Motor Company in Malta. In that operation there were no changes or alterations whatever made in the car in any way and the operation did not tear the front end loose or change it in any manner. After it was delivered to the garage, we placed it in the yard back of the garage. We have a lot where you can store automobiles and that lot is locked and kept in condition by our people. I saw the Pontiac most every day that it was in the garage there and

(Testimony of Wayne Long.)

there were no changes made in any particular during that period. What happened to it after it had been in our lot for awhile, I believe, to my knowledge, it was disposed of and picked up by the Pontiac Garage. The Pontiac Garage is about a block south from the yard where the car was stored. After the car was taken to the Pontiac Garage, that's the last I know about it.

Looking at a stereoscopic three dimension slide through the viewers I recognize the Pontiac and the picture is the left-hand front corner of the Pontiac. I remember when I picked it up at the scene of the accident and I do remember that left end as it was picked up out at the scene quite well. I would say that the Pontiac is the same as it was when I picked it up out at the barrow pit, and it correctly shows that portion of the Pontiac.

#### Cross-Examination

When I was out at the scene working about the Buick, I didn't look in the back seat of the Buick or in the trunk and I don't know what may have been in it. I would say that I got out there approximately about an hour after the accident so that the injured persons had all been moved by the time that I got there. I believe the highway patrolman was directing the operations, or he was the man that flagged me through the bridge and instructed me where to go. The highway patrolman

(Testimony of Wayne Long.)

was directing the operations while I was there, mostly.

Looking at picture No. 3 of Plaintiffs' Exhibit 4, the Pontiac was not in the position shown in that Exhibit when I got there, but I do notice the crease towards the middle of the top of the Pontiac and I see and observe the crease. As to whether I observed that in the Pontiac when I got out there, I would say not right at the scene. I observed it later after a closer examination of the car. After I made a closer examination, after we got to town, I looked at the under carriage and we examined it pretty well.

Describing the frame, well, the frame on the left-hand front corner of the unit was very badly damaged and driven back considerably towards the cowl of the unit. I don't believe the frame was broken, it was just badly damaged and bent. It was bent approximately below the place where the crease appears in the top. The whole side rail was buckled and damaged very badly in this whole area of the automobile. You see, it took the jolt here and damaged the frame back in here (indicating) causing the body to buckle.

Looking at picture No. 4 of Plaintiffs' Exhibit 4 which is taken at an angle which shows the right-hand side of the Pontiac, the buckling in the frame, which I found under the crease, which we had in the picture which I just looked at, would—as to whether it would tend to turn the whole right front fender of the Pontiac towards the east in this pic-

(Testimony of Wayne Long.)

ture, I believe the picture gives a false impression there. I don't believe that this fender was much out of line with the body in general because this door is open. If I remember right, this was pretty much in line on the left-hand side or on the right-hand side. However, on the left-hand corner it was driven back and buckled in next to the body. I don't understand that the whole right side of the Pontiac was intact and in a straight line, it was buckled down more than it was sideways though—buckled down more than sideways.

## STANLEY JAMES HOULD

### Direct Examination

My name is Stanley James Hould and my occupation is that of a grain farmer in the summer time and I work as a carpenter during the winter. In the fall of 1955, I was residing in Malta, and that was subsequent to August, 1955. I had occasion to make some measurements in connection with the bridge 12 miles east of Malta at the request of the counsel for the plaintiffs in the case. I am familiar with the use of a steel tape and measurements and so on and the work.

Q. Did you have occasion to measure the width of the Buick car, for instance?

A. I obtained the width from the Malta Auto Company, which they received, they got out of the Buick Facts Books of the Buick Motor Division, and it was typed up for me and signed by Lee

(Testimony of Stanley James Hould.)

Robinson here, to the length and width of the Buick car.

Q. Okay. Are you familiar with the Buick car of the same type, same kind of a car as the one that was involved in the wreck? A. Yes.

Q. Have you checked those measurements?

A. I did not check them, I took these measurements from the Buick Fact Book. They said it was the over-all length——

Mr. Alexander: Just a moment. We object to what they told you about the Buick Fact Book.

The Court: Sustained. [312]

I took some measurements of the bridge in question, and from those measurements I prepared a sketch of the bridge.

Plaintiffs' Exhibit No. 34 for the purpose of identification, was the sketch that I prepared. I obtained the facts from which it was prepared. I went out and measured the bridge with a steel tape, took all the figures down and scaled it out to a quarter of an inch per foot. It isn't exact, I'm not an architect. I mean to the nearest fraction of an inch. I mean it is very close. For the purpose of illustration, it would correctly depict, for instance, the distance between the poles or railings on the side of the bridge and the upper posts, and the distance those posts are apart. I correctly measured the bridge from the extreme easterly end to the extreme westerly end for the length of the bridge, and I correctly measured the width of the bridge to the railing and to the sleeper that lays along on each side of the road as you go along there,



(Testimony of Stanley James Hould.)

and those measurements were made correctly. After making those measurements, I sketched them in on the Exhibit so that they came to a point where one quarter of an inch or one quarter of an inch here is one foot on the ground—one quarter of an inch is one foot on the ground. The top of the map is toward the north and to the right is east.

(Witness then marks the directions on the sketch.)

Generally speaking these are the general directions of the ground. In measuring the measurements of the bridge, we stretched a tape, we had a hundred foot tape, we stretched it across the bridge right at the very tip of the sleeper at the east end of the bridge and we went the complete distance of the bridge, and in measuring that bridge with a steel tape, in the manner that I have indicated, I find that the overall length of the bridge was 96 feet  $\frac{1}{8}$  of the inch. Then I measured the west end of the bridge for the width, and at the west end from the outside of the sleeper on one side to the outside of the other side is twenty feet 3 inches. Taking one of the photographs to identify the point I made the measurements, I look at Plaintiffs' Exhibit 3 which will illustrate the bridge and the timbers at the base of the highway, and those are the ones that we call sleepers or timbers at the base of the highway. In making the measurements for width, I went from the base of the tenth timber shown in Exhibit 3, that is at the base, to the timber base on the other side

(Testimony of Stanley James Hould.)

or north side, and in that measurement, the inside measurement between the base of the sleepers was 19 feet 2 and  $\frac{7}{8}$  inches on the west end of the bridge. From the outside of this sleeper log, on one side to the outside of the log on the other side, the measurement is 20 feet 3 inches, and that sleeper is entirely inside of the posts that are indicated with a little square cross through them. That measurement would be only to the inside of the post, or to the inside of the post on the opposite post across the road, and the distance between the posts varied a little, they varied from 6 feet  $1\frac{1}{2}$  inch to 6 feet 5 inches, but I didn't indicate those variations on the diagram I made, but I set them in a position so that they could be measured and determined by using a scale of one-quarter inch equals one foot.

By using a scale of one-quarter inch equals one foot and taking two or three of the posts and measuring back, it figures out almost the same. They will average the same as I have them here. I found sixteen posts on the north and sixteen posts on the south side of the bridge. I made a record of a particular thing that appeared on the bridge as far as the posts or railings are concerned. Twenty-four feet and eight inches from the west end of the bridge, we found a scrape with paint and white paint scraped off a piece two feet and ten inches long. Then the distance between this first scrape and the second scrape was

(Testimony of Stanley James Hould.)

fourteen feet and one inch, and from the second scrape to the third scrape, it was nineteen feet six inches, and that large scrape was five feet eight inches long and about one inch of this three by eight was completely chipped off the top at that point. About three feet if it was completely chipped off of it, and that is thirty-eight feet from the east end of the bridge and to the last indication of it going east would be thirty-two feet eight inches. As to the east end of the bridge and at the south side of the bridge, the uprights and wooden railings that run along. I went from the east end of the bridge on the south side to find the scrapings and gouging that was where the chipping out occurred. The one on the east of the bridge started thirty-eight feet from the east end of the bridge. (Witness marks Exhibit 34 to indicate the distance from the east end of the bridge.) I put an arrow running a line up a little bit, now this arrow, I will write the letter "A" right down close. I have placed a small letter "A" and an arrow on the south side of this sketch, and that was the beginning of this five foot eight inch scrape, and the part that was chipped off the top of this three by eight, starting seven posts, that would then be the thirty-eight feet from the east end of the bridge to the seventh post.

Looking at Plaintiffs' Exhibit No. 7, I recognize the photograph and with reference to the east end of the bridge, the post where the scrape started was right in here. (Indicating.) That would be off

(Testimony of Stanley James Hould.)

to the right edge of the picture, wouldn't it? Yes. This post No. 6, this is 6 here, but this is 7 where the scrape started, and if we take Plaintiffs' Exhibits 6 and 7, we can observe the starting of this gouged out point. The total scraping at this point was a 5 foot 8 inch piece, starting at the 7th post. Looking at Plaintiffs' Exhibit 6, the scraping started at post No. 7 which would be indicated by counting two, three, four, five, six, seven. From the east end of the bridge it was 38 feet, and the scraping extended up to 32 feet 8 inches from the east end of the bridge. I could not see any scrapings easterly beyond that point. There was also a 3 by 8, the bottom plank, that was completely split. It was split down the center. I refer to the split in the post between Nos. 4 and 5. There were paint markings along the bridge and they were red in color.

(Thereupon, Court adjourned until 10 o'clock, a.m. the following day, October 27, 1956, at which time the following proceedings were had:)

Mr. Angland: Your Honor will recall that yesterday afternoon I stated we had a witness we wanted to call out of order this morning?

The Court: Yes.

Mr. Angland: I wonder if we could call that witness.

The Court: Well, couldn't we wait until we finish with this witness?

Mr. Angland: If we were going to finish. I thought

(Testimony of Stanley James Hould.)

the way Mr. Doepker started with this witness it was going to take quite awhile.

The Court: Do you have much more to go with this witness?

Mr. Doepker: I don't think we have too much more as far as he is concerned, except maybe putting some markings, measurements on that exhibit there, the sketch, your Honor.

The Court: Well, I think let's proceed and get this witness through. [324]

In making the measurements on the south side of the railing of the bridge with regard to splintering conditions and with regard to smears of paint or markings, I made measurements to show where they were located, and taking a rule and my notes, I tell you that what is disclosed on the easterly end of the bridge from the first marking that is indicated with an arrow "A" in marking this sketch, I put an arrow on the sketch.

Q. When did you make these measurements, Mr. Hould?      A. October 31, 1956.

Q. Now, will you proceed, please, and indicate and describe the markings on the bridge there on the south side?

Mr. Angland: Now, just a minute, we object to that, because from the testimony of the witness that he has just given, it is impossible for him to have made measurements. He said he made them October 31, 1956, and that date hasn't yet arrived, your Honor.

The Court: Well, what date did you make the measurements?      A. September 31st. [326]



(Testimony of Stanley James Hould.)

To indicate the position of the last marking on the bridge, and I marked that last marking with the letter "B."

Cross-Examination

My measurements of the width of the bridge were made at the west end, and I measured the east end as well, and the bridge is about the same width. It is about an inch difference. An inch narrower. At the west end the width was 19 feet 3 inches and the east 19 feet 3 and  $\frac{3}{4}$  inches. I made no measurements on the north side of the bridge.

The Court: You suggest you have a witness—who is the witness?

Mr. Angland: Mr. West.

The Court: Why do you want to put him on out of order?

Mr. Angland: Your Honor, he had a man work a double shift for him. He does have to get back quite a distance from here by midnight tonight for a job. We kept him up practically all night last night to get here.

The Court: Well, very well, I'll permit you to put him on.

Mr. Angland: I might say he worked the night before last night, your Honor. [330]

## PAT WEST

## Direct Testimony

My name is Pat West. I am 32 years old and I have a family consisting of a wife and four children, and I reside at the present time, at Outlook, Montana. I am a driller for the Noble Drilling Company.

In August, 1955, I was working for the Monarch Lumber Company in Saco. Previous to that time, I was with the Monarch Lumber Company in Sunburst, Montana. I have had four years in the Army Paratroops, and I was in the military service between 1942 and 1946. I have had training in first aid. I was a volunteer ambulance driver for three years at Sunburst. My military training along that line, paratroops, were pretty much their own doctors when behind the lines. We had very strict courses in first aid.

I have driven automobiles since I was about 14 years old, I guess, and from my experience in driving, I am able to estimate speeds of vehicles, I believe, pretty close. I have driven quite a little bit on the highways, oh, on many trips, about two trips a year from Sunburst up to Outlook where my family is. That happens a couple times a year. And fishing every week end. My experience has been mostly in Montana. In August, 1955, I was with the Monarch Lumber Company in Saco. I recall seeing an accident about that time. The precise day of the accident, the 31st of August, the 30th day of August, it

(Testimony of Pat West.)

was, and on that day I was going to Malta from Saco. I started that morning about 9 or 9:30, I guess, and the accident happened on a bridge about 12 miles out of Malta, in a easterly direction so that it was between Saco and Malta. Driving from Saco to the place of the accident, I was driving between 60 and 65 miles per hour, I imagine, and before I got to that bridge 12 miles east of Malta, I saw a vehicle ahead of me. The first distance was a mile and a half to two miles and it was four or five miles before he hit the bridge.

Q. Were you—did you ever come up upon that vehicle more closely?

A. Yes, just before coming to the bridge.

Q. And just tell us what you saw when you—just before coming to the bridge, or what you did?

A. I was going to pass the Pontiac car that was in front of me.

Q. It was a Pontiac in front of you?

A. Yes. And being over the road before, I remembered that bridge just ahead, and I pulled in behind.

Q. And at that time, would you be able to judge the speed of the Pontiac?

A. I was still maintaining my speed—I would imagine 45.

Q. And they were traveling 45, and you were maintaining your speed. What did you do then?

A. I immediately had to start to slow down.

Q. Now, at that time, where was your car with reference to the center line? [334]

(Testimony of Pat West.)

A. I pulled in behind the Pontiac at that time.

Q. Where was the Pontiac with reference to the center?

A. They were on the right hand side of the road.

Q. And proceeding in which direction?

A. Westerly direction.

Q. And then what did the Pontiac do?

A. It continued to brake down before it hit the bridge, before it came to the bridge, before it entered the bridge.

Q. And what did you do?

A. I then really had to slow down, I braked down.

Mr. Doepker: Speak up, please, witness.

A. I had to really force myself to brake down to keep from running into the back of the Pontiac.

Q. As the Pontiac went on to the bridge, are you able to estimate its speed?

A. 40 at the most, I would say.

Q. And the Pontiac was then where with reference to the center of the road?

A. They were on their own side of the road.

Q. Now, was there another vehicle in the vicinity at this time?

A. A red Buick was coming from a Westerly direction.

Q. Had you seen that Buick?

A. Yes, after I pulled over the knoll before you hit the bridge, I saw the Buick. [335]

Q. About where was the Buick then?

A. They were a quarter of a mile from me then.

(Testimony of Pat West.)

Q. And after—which direction was the Buick traveling?      A. East.

Q. And at the time that the Pontiac had slowed and got on to the bridge, where was the Buick?

A. It was just coming on to the bridge.

Q. Are you able to estimate the speed of the Buick when you saw it?

A. I would say 60, 65.

Q. And then what happened?

A. They collided on the bridge, and the Buick was thrown up against the guard rail and bounced off and careened across the road immediately in front of my car.

Q. You say the Buick was careened against the guard rail?

A. Yes, it careened against the guard rail on the right side.

Q. And then where did it go—the guard rail on whose right side?

A. On the Buick's right side.

Q. With reference to north and south——

A. It would be the south side.

Q. On the south guard rail, and then the Buick proceeded where?

A. It careened across the road and went into the north [336] barrow pit immediately in front of my car.

Q. Your car—you say immediately in front of your car. Could you give us an idea of the distance?

A. Approximately 10 feet.

Q. And what was your car doing at that time?



(Testimony of Pat West.)

A. The left side.

Q. What did you find?

A. I tried to open the door, and it was jammed shut so that I couldn't, and I reached in the door and took the lady's pulse, and I could not receive any pulse at that time.

Q. Have you taken people's pulse?

A. Yes.

Q. Had some training in that in your first-aid training?      A. Yes.

Q. How about your paratroop training?

A. Yes.

Q. Having done that, then what did you do? [339]

A. The children had returned to the car and were climbing back into the car.

Q. What were they doing?

A. They were trying to get their mother to sit up.

Q. So what did you do?

A. I took them from the car again and laid them down on the shoulder of the road and covered them up.

Q. Then, when—you laid them down on the road or what?

A. Yes, on the shoulder, and I asked a lady standing there if she would take care of those kids and keep them out of the car.

Q. And then there was a lady standing there?

A. Yes, there had been another vehicle drive up at that time.

(Testimony of Pat West.)

Q. Then where did you go?

A. Then, I went to the Pontiac where it was setting on the bridge.

Q. When you went to the Pontiac, was there anything about it that indicated something should be done or otherwise?

A. Yes, there was smoke rolling from under the dash on the Pontiac.

Q. What did you do?

A. I was going to open the hood and pry the battery cables loose to stop a short.

Q. Were you able to do that? [340]

A. No, the hood was jammed in so I couldn't open it.

Q. With respect to opening the hood, what did you do or use?

A. I tried to open the trunk to see if there was something in there that I could pry it loose, and I couldn't get the trunk opened.

Q. At this time what can you tell the Court about the position of the Pontiac with reference to the north rail of the bridge?

A. The right rear bumper was jammed into the north railing of the bridge.

Q. You couldn't get the trunk opened?

A. No.

Q. Then, what did you do?

A. After I couldn't get the trunk open, I tried to open the hood with just my bare hands. I couldn't do that either. It was jammed in. Then I proceeded to get them out of the car before it did start afire.

(Testimony of Pat West.)

Q. I show you now, Mr. West, a picture which is Picture No. 14 in Plaintiffs' Exhibit 4 and which I think the evidence in this case shows is the Pontiac after it had been pulled off the bridge and onto the west, and calling your attention to the hood in that picture, is that the way you found it?

A. No, the right fender, or the left fender was still intact [341] at that time.

Q. When you went up with reference to the fire? A. Yes.

Q. And showing you now a picture which is numbered 3 in Plaintiffs' Exhibit 4, and calling your attention to some metal to the south of the Pontiac that appears in that picture, what have you to say about that?

A. Well, that fender wasn't laying in the middle of the road there at that time.

Q. And with respect to Picture No. 5 in Plaintiffs' Exhibit 4?

A. No; that fender wasn't there at that time, either.

Q. I take it then that the fender was on the car when you were out there? A. Yes.

Q. Now, with respect to this Picture 14, which I showed you just a minute ago, and particularly the position of the hood as shown in that picture, in addition to the fender, what have you to say about the hood in that picture as compared, if there is a comparison, with the hood when you went up to the Pontiac?

(Testimony of Pat West.)

A. I would say it was in pretty much the same position.

Q. Pretty much the same position?

A. Yes. It is hard to tell without that fender on there, but there was no room between the fender and the hood to [342] reach in on top of the motor or find the battery or anything.

Q. Well, that is what I am getting at. You couldn't get to the battery, so what did you then do?

A. I decided I better get them out of the car.

Q. And who—what—who was in the Pontiac?

A. A man and a woman.

Q. On which side was the woman sitting?

A. On the right side.

Q. And the man on the—— A. Left.

Q. And which of those persons did you take out first? A. The woman.

Q. Were you alone at that time?

A. No; there was another gentleman there at the time that helped.

Q. When you took—just tell the Court what you did with respect to the woman?

A. Well, we took her from the car and carried her to the West end of the bridge and laid her down on the shoulder of the road, and then sent word with another person there to go get some blankets, and then we returned to the car to get the man out.

Q. Did you open any doors?

A. Yes; we opened the left-hand door at that time to remove the man. [343]

Q. The man was where?

(Testimony of Pat West.)

A. He was sitting behind the wheel.

Q. And with reference to any physical injury, did you see any?

A. Not at the time, no. He was in great pain.

Q. Well, what did you do in the way of getting him out?

A. Well, he was—his foot was jammed down beneath the brake pedal and when we attempted to pull him from the car, he screamed with pain very much, and we had to work his foot from under that brake, so I twisted his leg until we did get him from under the brake, and I took him from the car and laid him at the West end of the bridge beside the woman.

Q. Now, when you took him out of the car, you, and do you know who the other fellow was?

A. No; I didn't know him.

Q. Have you any idea?

A. Well, his car that was sitting there was an out-of-state car.

Q. Where did you take the man?

A. To the West end of the bridge and laid him beside the woman there.

Q. And what did you do with him?

A. There was a nurse, or a lady walked up then and asked if she could be any help, and I said yes, and she said that she was an R.N. I said, "Thank God, you take care of these [344] people," and then I returned to the other end of the bridge.

Q. When you say you returned to the other end of the bridge, that would be which end?



(Testimony of Pat West.)

A. Where the children were, on the east end.

Q. When you got to the other end of the bridge, what did you do then?

A. Well, they were deciding to take them in, and I had a station wagon, take them into the hospital, and this girl that had a panel, a laundry truck, I believe it was, she said she would take the children in with her, so I then said I would go to the other end of the bridge, and I would help take those people in.

Q. What did you do then?

A. I got in my car and crossed the bridge with my car.

Q. Up until this time, had any vehicles in the collision been moved?      A. No.

Q. You got in your car at the east end and drove to the west end?      A. Yes; that's right.

Q. Do you know whether any ambulance had arrived?

A. I believe one had arrived just—well, after that, it did. I had crossed the bridge.

Q. You had crossed the bridge?

A. Yes. [345]

Q. And after you had crossed the bridge, what did you do, if you recall?

A. We were going to load these people in my car, and the motor vapor locked on my car, and I couldn't start it again then, and then there was another station wagon sitting there. It was the nurse's husband's car, I believe, or another station wagon, and they said that they would take them in.

(Testimony of Pat West.)

Q. They said they would take, what persons are you referring to?

A. The people on the west end of the bridge.

Q. Now, about the ambulance, can you give me any more idea about when it came?

A. It came about that time because they said they would take over from there, and we left.

Q. When you say, "we left," who do you include?

A. Well, the laundry truck had crossed the bridge then.

Q. Do you know whether the Pontiac had been moved?

A. No, it hadn't been moved at that time.

Q. The laundry truck and who else?

A. Then the station wagon which was already on the west end of the bridge had turned around and proceeded toward Malta. Then by that time, my car had started, had cooled enough to start, and I followed them into Malta.

Q. Where did you go when you got to Malta?

A. Immediately to the hospital. [346]

Q. What was your purpose in going into Malta?

A. I thought that they would need help in unloading them, and then there was several blankets I had promised people I would bring back out from the hospital.

Q. These blankets, where had they come from?

A. Well, everybody down the line had brought blankets when we sent word out for blankets, and

(Testimony of Pat West.)

we had quite a number of them there from all the cars that were sitting up and down the road.

Q. How long did you stay in Malta?

A. Approximately a half-hour, 45 minutes.

Q. Then, where did you go?

A. Then I returned to Saco.

Q. What was the situation when you got back to the——

A. The cars were being removed then.

Q. And did you stop?

A. No, I never stopped on the way back at all.

Q. Now, going back to the place where you came into the bridge when the accident happened, the Pontiac, where was it with reference to the lane of travel you were in?

A. The Pontiac was on the right side of the road.

Q. Did it continue that way?

A. Yes, all while I followed it up until the time it entered the bridge.

Q. On its own right-hand side of the road? [347]

A. Yes.

Q. When you went—after you had stopped and went down to the Buick, the man that you said was there, did you tell me where he came from, what part of the car he got out of?

A. Yes, he got out of the right-hand front door.

Q. And what did he do?

A. He was quite dazed, and at the time when I first got over there, he was throwing bottles over

(Testimony of Pat West.)

the fence. That is the first thing that he was doing, picking the bottles that had fallen from the car.

Q. While you were there, did he take the children out of the car?

A. No, I took the children from the car.

Q. And did you ever have occasion to look at the back of the Buick?

A. Yes, sir, when I removed the children.

Q. Did you see anything in there besides the children?

A. Well, there was a beer case sitting in there with bottles in it.

Q. Sitting where?                      A. On the floor.

Q. Did the man in the Pontiac, do you know—or not the Pontiac, the man in the red Buick, do you know what attention was given to him, or care?

A. I tried to encourage him to lay down and I told him [348] that I would take care of the children and get them out of there, and at that time, he was bleeding quite badly from a wound in his head, and we said we would wrap it up, and he continued walking up and down the road, and finally he wrapped a handkerchief around his head there, but we couldn't get him to lay down. He just kept walking.

Q. Would you know, Mr. West, whether the man from the red Buick went up to the Pontiac, I mean immediately after the accident?

A. I don't believe so.

Q. Well, would you know, do you know who was the first person to get to that Pontiac?

(Testimony of Pat West.)

A. Yes, I was.

Q. Just for the record, Mr. West, when were you first contacted with reference to this action by myself, Mr. Angland, Mr. Morra, or anybody connected with us?

A. About two o'clock yesterday afternoon.

Q. Had anyone contacted you about the accident prior to that time?           A. No, sir.

Mr. Alexander: I think you may examine.

Cross-Examination

By Mr. Doepker:

Q. How did this contact occur yesterday afternoon? [349]           A. Pardon?

Q. How did the contact occur yesterday afternoon?

A. A fellow from Glasgow drove out to my place to see me.

Q. Who was the man from Glasgow?

A. Leonard Langen I believe his name was.

Q. Leonard Langen, is that an attorney?

A. Yes.

Q. And who did you first tell about your being on the scene?           A. At that time?

Q. Well, later, or any time?

A. Well, after the accident happened there were several of us discussed it immediately after the accident.

Q. Who did you discuss it with immediately after the accident?



(Testimony of Pat West.)

A. I believe it was Bob O'Brien in Saco.

Q. Bob O'Brien, is that the man who runs the restaurant there?      A. Yes.

Q. And when did you talk to him about it?

A. It was just that afternoon.

Q. The afternoon of the accident, and what did you tell him about it?

A. Well, I just told him I had come upon this accident.

Q. Did you give him the same details that you have given [350] here in Court today?

A. No.

Q. How much did you tell him about it?

A. I just told him this woman had been killed and that there had been quite a bad accident.

Q. What else?      A. That was all.

Q. Did you say you helped the man and woman out of the Pontiac?

A. Yes, I said that I helped.

Q. You told that to Mr. O'Brien, too, did you?

A. Well, I imagine I did.

Q. Let's get your best memory of it. We don't want your imagination.

A. I'm not sure whether I told him that or not.

Q. You're not sure you told Mr. O'Brien you had helped the man and the woman out of the Pontiac?      A. No.

Q. Did you tell him about helping the children out of the Buick?

A. I don't know, I don't remember.

Q. Well, what is your best judgment on it?

(Testimony of Pat West.)

A. I just don't remember whether I told him that or not.

Q. All right, now, you told me you talked to Mr. O'Brien about it on the afternoon of the accident, is that correct, [351] and who else around Saco did you talk to about it?

A. Oh, I don't know, I guess he was probably about the only one. Most of them had driven up here later and saw the accident themselves.

Q. Can you recall any other people who have lived in Saco or have lived there for any length of time while you were there that you mentioned it to?

A. No.

Q. Now, you don't know how Mr. Langen got your name, do you?      A. No, I don't.

Q. Did you leave your name at the hospital when you went up there?      A. No, I didn't.

Q. Did you contact any of the peace officers there and leave your name?      A. No, I didn't.

Q. Didn't you think it would be important for a man who was an eye witness for the officers to know about you?

A. Well, officers were there at the time of the accident while I was there. They came about the time I was leaving. No one had approached me.

Q. Did you see the highway patrolman there?

A. I don't remember seeing his car at all.

Q. Did you see Mr. Dove, the Sheriff at Malta? [352]

A. I wouldn't know him if I saw him.

Q. Well, when you went into Malta on that oc-

(Testimony of Pat West.)

casion weren't some of the peace officers around there where those people had been taken to the hospital?

A. Nobody was at the hospital except the doctor and an intern, or a male nurse I believe he was, and the nurse that went with us and the lady that drove the laundry truck, and myself and the nurse's husband.

Q. Did you get the name of the lady that drove the laundry truck?      A. No, I didn't.

Q. What kind of a looking woman was she?

A. Oh, golly, I couldn't tell you, I just don't—

Q. You talked to her there and asked her if she would take the children.

A. I just turned to her and I said, "Take care of these children while I go down to the other car."

Q. You didn't—how old a women would you say she was?

A. I wouldn't even estimate that.

Q. Well, you can tell us some idea about it can't you, within 10 or 12 years approximately?

Mr. Alexander: Objected to as argumentative. He said he doesn't know.

Mr. Doepker: That's all right.

The Court: Overruled. [353]

A. I would say she was approximately my age.

Q. How old are you?      A. 32.

A. I don't remember that. I believe she had a pair of slacks on.

Q. How was she dressed?

(Testimony of Pat West.)

Q. A pair of slacks? A. Yes.

Q. Was she bare headed?

A. I don't recall.

Q. Well, now what was—give us some description of the man that helped you take the people out of the Pontiac.

A. Oh, gee, I couldn't tell you anything about that, I know he wasn't very tall, he was probably about my size.

Q. How tall are you?

A. Oh, about 5 foot 10, I guess.

Q. 5 foot 10, what do you weigh?

A. 185.

Q. How much? A. 185.

Q. Now, what was your work in Saco at this time, what work were you doing?

A. Lumber business.

Q. And who were you working for?

A. Monarch Lumber Company. [354]

Q. Were you an employee there, or were you the manager? A. I was manager.

Q. You were manager? A. Yes.

Q. Did you have any employees there in this lumber company?

A. Yes, I believe I had one at that time.

Q. Well, you would know if you had a man working there, wouldn't you?

A. I had a man part time. When he wasn't doing his regular work, why, I could get him to help me out for a day or a couple of days.

(Testimony of Pat West.)

Mr. Doepker: You mean the highway man?

The Court: No, Kapphan, whatever his name is, he testified that he saw this man at the scene of the accident. [357]

Mr. Doepker: All right.

Q. Now, then, when did you leave Saco?

A. Oh, between nine and ten that morning.

Q. When did you leave your work at Saco?

A. Oh, I believe I quit the company in September and left there the last of October or first of November, some place there, I don't remember.

Q. All right, now, let us go back. How did you reach in to where the woman was seated in the Buick when you went down the hill there on that occasion?

A. Through the left hand front door window.

Q. And was that front door open?

A. No, it was closed.

Q. Was the glass broke out of it?

A. I don't recall.

Q. Well, you had to reach through the window to get the feel of her pulse, did you not?

A. Yes. The window may have been left open, and I don't know whether it was broken or not.

Q. Now, where did you stop your car on this highway?

A. Almost immediately—I imagine my front bumper and the front bumper of the wrecker would have been just at the same place.

Q. How far ahead was the Pontiac car as you came over that hill there at that time? [358]



(Testimony of Pat West.)

A. How far ahead of me?

Q. Yes.

A. I attempted to pass the Pontiac just before coming to this knoll, and I pulled immediately in behind it and continued braking down. I was going at a higher rate of speed than he was and I had to brake down, and I saw this car coming, the red one.

Q. And when you saw that car coming, where was the Buick at that time?

A. They were on further up the road.

Q. Well, how much further would you say?

A. Well, I would say the distance between me and where I first saw the Buick was approximately a quarter of a mile.

Q. And when did you first see the Buick on this occasion?

A. I noticed it as I continued over the knoll, just as I come up over the top of the knoll.

Q. You think it was a quarter of a mile away as you were coming over the top of the knoll?

A. Yes, approximately.

The Court: Court will stand in recess until 10 minutes after 11.

(10-minute recess.)

Q. Did you see a panel laundry truck there driving along in that same area with you at the time you approached the top of the hill to the east of this bridge? [359] A. No.

Q. Did a panel truck, a laundry truck pull up along there behind you?

A. Behind me, yes.

Q. And how soon after you arrived on the west-

(Testimony of Pat West.)

erly side of the brow of that hill did the laundry truck come up?

A. It was quite soon after that.

Q. Well, could you give us a little better——

A. Maybe a couple of minutes.

Q. Maybe two minutes? A. Yes.

Q. And then where did the laundry truck stop, the panel truck?

A. I am not too sure where he stopped, the panel truck, I am not sure.

Q. Now, let us come back to the time that you are about to pass the Pontiac. Where was the Pontiac when you started to go around it?

A. It was just before the knoll.

Q. And then what was it that caused you not to pass it at that place?

A. I realized the bridge, I remembered that bridge there.

Q. You had been between Malta and Saco a number of times, hadn't you? A. Yes. [360]

Q. And were familiar with the sign to the right of the road that said "Narrow Bridges Ahead"?

A. I believe so, yes.

Q. You knew about that at the time?

A. Yes.

Q. And were you familiar with the place that you were driving right at that time? A. Yes.

Q. And knew you were coming to the bridge, didn't you? A. Yes.

Q. Then, was there anything else that caused

(Testimony of Pat West.)

you to slow down and pull in behind the Pontiac car?

A. No, none other than the fact that I remembered the bridge there.

Q. I see. And you saw the Pontiac car break over the hill? A. Yes.

Q. And at that time, how far behind it were you?

A. I had pulled in behind it at that time.

Q. Approximately how far behind it, though?

A. Oh, probably 50 or 60 feet.

Q. When did you apply your brakes, or how did you come to stop?

A. As soon as I decided to pull back in, I started braking my car at that time.

Q. And give us some definite idea now as to where you [361] started braking your car with respect to the brow of the hill?

A. Probably it would be, oh, up to the brow of the hill.

Q. Almost to the what?

A. Almost to the top of the brow.

Q. Now, when did you decide to bring your car to a complete stop?

A. When I noticed the Pontiac was slowing down much faster than I was.

Q. And the Pontiac was slowing down coming into the bridge, was it? A. Yes.

Q. Now, do you know—what would be your judgment of the distance from the brow of the hill to the bridge?

(Testimony of Pat West.)

A. Just familiarity with the road.

Q. No, what I mean, I am trying to get you to estimate the distance from the brow of the hill to the bridge?

A. Oh, I would say it is 200 feet approximately.

Q. Now, then, you were following the Pontiac coming over the brow of the hill? A. Yes.

Q. And then the Pontiac was how far from the bridge do you estimate at the time you come over the brow of the hill?

A. Oh, a hundred feet, 120.

Q. So, the Pontiac was 120 feet from the bridge, and at that same time, you say the Buick was back approximately a quarter [362] of a mile?

A. From where I was, yes.

Q. Well, from where you were, yes, and you were about 200 feet from the bridge, weren't you?

A. Yes.

Q. You were up at the top of the hill. Now, then while this Pontiac came down into the bridge from 120 feet on to the bridge—— A. Yes.

Q. Do you say now that this Buick traveled a quarter of a mile, or approximately a quarter of a mile in to where the scene of the accident was?

A. No, a quarter of a mile from where I first saw the Buick.

Q. Well, let's get some—this is important, let's get it into some detail, if you saw it——

A. Approximately a thousand feet.

Q. You think that the Buick came a thousand feet while the Pontiac was going 120 feet?

(Testimony of Pat West.)

A. Let's see, I was trying to figure out, 200 feet from the crest of the hill—well, it would be approximately 800 feet from where I saw it until it hit the bridge.

Q. Well, then, do you say that the Buick traveled 800 feet while the Pontiac traveled 120 feet reaching the bridge, is that right? A. Yes. [363]

Q. Now, the Pontiac remained on its own side of the road? A. Yes.

Q. And the cars came together with the Pontiac on its own side of the road? A. Yes.

Q. You are sure about that?

A. They went on to the bridge on the right hand side of the road.

Q. Well, that isn't what I asked you. Did the cars come together on the Pontiac's right hand side of the bridge?

A. The Pontiac was on the right hand side of the bridge, yes.

Q. And in the collision, they came together on the right hand side of the bridge?

A. Yes. The car was on the right hand side of the bridge. They didn't both hit in the right hand side.

Q. Well, let's change it then this way: The right hand side, as far as your side of the highway was concerned, would be the north side? A. Yes.

Q. And the Buick, traveling in a proper lane, would be on the south side, wouldn't it?

A. Yes.

Q. All right, then the collision occurred on the



(Testimony of Pat West.)

north half of the highway on the bridge, is that right? [364]           A. Yes.

Q. And that is as you saw it?           A. Yes.

Q. Now, did the position change in the collision?

A. Yes, the cars were twisted in the road, and the Buick was slammed up against the railing.

Q. I call your attention to Plaintiffs' Exhibit 4, Picture 11. Do you recognize that scene there?

A. No, I don't.

Q. You don't recognize it?

A. No, that wrecker wasn't there.

Q. Oh, I don't mean the wrecker, I am talking about the scene.

A. I recognize the position of the car.

Q. Now, then, you saw this Pontiac slammed against the north side of the bridge, didn't you?

A. I saw, yes, it was pushed into the bridge railing.

Q. Well, it was slammed against it, wasn't it, if it was hit on the north side in collision with the Buick, wasn't it slammed against the north side?

Mr. Alexander: Now, just a minute, that is objected to as argumentative and not the statement of any evidence that came in in this case.

Mr. Doepker: Well, he said it was pushed against the north side of the bridge. [365]

The Court: The objection is sustained. That is what he said. You are trying to make him say it was slammed. You don't have to try to make him say it. Just have him tell the story.

(Testimony of Pat West.)

Q. All right. What part of the Pontiac went against the north side of the bridge?

A. It was the rear bumper and rear fender.

Q. The rear bumper or rear fender?

A. Yes.

Q. Now, were you able when you went down to get the lady out of the Pontiac to go around the rear bumper?

A. No.

Q. Which way did you come in?

A. I walked around in front.

Q. You walked around in front. So that as the cars came together, the Pontiac was on the north side?

A. Yes.

Q. And when the Buick went through, it went down in the barrow pit, didn't it?

A. Yes.

Q. Now, what change was made in the position of the Pontiac as the Buick went through there?

A. It was left sitting dead still, right where it is at.

Q. So that another part of this thing that you recall is that the Pontiac was sitting dead still after the collision?

A. It was. [366]

Q. It wasn't moved from the time that they collided until the Buick went around the barrow pit?

A. No.

Q. So that it is in the same position standing here as you recall it as it was at the time of the collision?

A. Except that the car was pressed in firmly against the bridge here.

Q. Well, then, there would be that difference

(Testimony of Pat West.)

that the Pontiac was pressed firmly against the bridge, is that it, now?      A. Yes.

Q. Did you observe in the instant of the collision how the two cars came together?

A. Well, as I was braking down, the cars hit, and the Buick was thrown into the bridge railing and careened across in front of me, and I was stopping to prevent from getting hit with the Buick when it come across the road.

Q. So, do I understand that you didn't get the exact position when they came together?

A. I saw the cars as they hit, and the Pontiac was continued on the right hand side of the road.

Q. All right, let's get some cars and see if you can give us an illustration. You take two cars here—we will call the yellow one the Pontiac and the red one the Buick.      A. Yes.

Q. Let's call the line here (indicating) the approximate [367] center line of the bridge, and illustrate for his Honor your recollection of how the cars came together?

A. Well, as they came—this is the bridge (indicating)?

Q. Yes, this is the bridge.

A. The Pontiac came in on its side of the road, the right hand side, the north side of the road. As the Buick came in on to the road, the collision was hit here, and the Buick was thrown this way——

Q. Well, let's have the cars come together, please, as near as you can, how did they come together?

A. They must have locked right in here, or in

(Testimony of Pat West.)

this position because this car was on the right hand side of the road. The accident couldn't have happened that way. I was watching the back of this car. That was the one I was afraid of running into, that was why I was braking down.

Q. I thought you was braking down so the Buick wouldn't run into you?

A. Well, I had to stay out of the way of this Pontiac to start with. That was before the accident.

Q. All right, then, the collision occurred on the bridge. What is your best judgment of approximately where?

A. Well, I would say the distances on this to the bridge, it was right about in here. Of course, the cars you have got here are a little long——

The Court: Indicating the last third of the bridge? [368]

A. Indicating the last third of the bridge, yes.

Q. And, then, the way you have it illustrated there, they were both on their own side at the time of the collision?

A. No, I say that the Pontiac went on to the bridge on the right hand side of the road——

Q. Yes.

A. And the collision occurred. Now, this car, I wasn't watching where it was going, whether it was over on the wrong side. It must have been to hit the Pontiac, because the Pontiac was on the right hand side of the road.

Q. Coming on the bridge?

(Testimony of Pat West.)

The Court: Let me get this straight, what you are saying, that you didn't see the impact, you just saw the car ahead of you?

A. No, I saw the impact, your Honor, yes, but to put the wheels of this car across that road, I couldn't say that because I wasn't watching the line, but I saw the impact, I saw the Buick hit the bridge railing, and that is when it come right around in front of my car.

Q. Well, now, let's get that part of your recollection straight. You say you think that the cars then hit in such a position that the Buick careened over after the collision——

A. After the collision, the Buick hit the bridge railing.

Q. Then, the collision occurred further down the bridge so that the Buick careened after the accident, is that it? [369]

A. Yes, it hit the bridge after it hit the Pontiac.

Q. After it hit the Pontiac. And then the Pontiac, was the Pontiac driven back towards you?

A. The Pontiac was just lodged in there that way. It twisted in between the Buick and the rail when it hit, and when it hit, it just swooped it around, it spun it in the road.

Q. And the Pontiac was spun after it was struck by the Buick and went in against the guard rail, is that right?      A. Yes.

Q. And the Buick careened off and hit the side of the bridge, is that correct?      A. Yes.

Q. And then did you make any examination of the cars afterwards?



(Testimony of Pat West.)

A. I never paid any attention to either one until I was trying to get the hood open on this one, and tried to open the left hand door on this one to get her out.

Q. I see. Thank you. I believe that this is a picture of the bridge looking toward Saco from Malta?

Mr. Alexander: Which one, Mr. Doepker?

A. That's right.

Q. Picture No. 4 of Exhibit 4. Then, would you say that the collision took place westerly from the place that the Buick struck the bridge, westerly from the place that the [370] Buick struck the bridge?

A. Westerly, that is towards Malta?

Q. Towards Malta.

A. They met and it hit afterwards.

Q. That is what you say?

A. I would say it was thrown immediately across from the car, it threw it immediately into the side of the bridge.

Q. You think that the impact pushed the Buick against the side of the bridge?

A. Yes, or threw it there.

Q. Yes, threw it there, or it glanced there, however it got there. So that the collision then took place, at the place where the cars came together, the Pontiac then immediately hit the bridge.

A. The Buick.

Q. Or the Buick, yes; and the Pontiac hit the brige on the other side?

A. Yes, and it was twisted around.

(Testimony of Pat West.)

Q. Now, then after the cars had come together and had stopped in their respective positions, was the Pontiac over the center line?

A. After the accident?

Q. After the accident.

A. I don't remember seeing a line, but——

Q. There isn't any line there, I don't think. Was the Pontiac [371] still on its own side?

A. Yes, the back end was, but——

Q. I am interested——

A. In the position the car sits, yes, the front end was across the line, I would say, if there was a line there.

Q. Well, of course, this is a photograph. I want your memory of it, you was on the ground.

A. There was no line there. I couldn't actually say that the front end of the car was over the line, over the center.

Q. But the back end of it was against the north——

A. Against the bridge, yes.

Q. So that you couldn't get around it?

A. No, I couldn't get around it.

Q. I mean from behind? A. No.

Q. Now, then, after the collision, you went to the Buick first? A. Yes.

Q. Is that right? A. Yes.

Q. And, would you remember those children if you saw them that you took out of the car?

A. I don't believe I would, they were a boy and a girl.

(Testimony of Pat West.)

Q. And you took them out of the car?

A. Yes. [372]

Mr. Doepker: Michael and Catherine, will you stand up, please. Come up here.

Q. All right, that is near enough. Now, would you say that you took those two children out of the Buick car?

A. As to the way they were dressed, I wouldn't recognize them if I met them on the street. They were pretty well ruffled up, and they were both crying.

Q. Neither one of them was unconscious?

A. No, they were both conscious.

Q. They were both conscious? A. Yes.

Q. And where did you take them out of the car?

A. I took them both from the back seat.

Q. Took them both from the back seat?

A. Yes.

Q. And after you took them out, what did you do the first time you took them out?

A. I laid them on the shoulder of the road, tried to get them settled down while I found a blanket for them.

Q. All right. Then what happened?

A. The man asked me about his wife and I went to the car to try to get her out on the left hand side of the Buick.

Q. Yes. Then, in the meantime, had the children gone back into the Buick?

A. They went back in while I was trying to get her out of [373] the car.

(Testimony of Pat West.)

Q. And then did you take the children out the second time? A. Yes.

Q. And then after you took them out the second time, did they remain there, or did they go back again?

A. No, the woman showed up in this panel wagon. I asked her to keep them away from the car.

Q. So, you took the children out twice?

A. Yes.

Q. You are sure of that? A. Yes.

Q. On that occasion, and out of the Buick car?

A. Yes.

Q. And which side?

A. Out of the right side.

Q. Now, do I understand it that after this collision, you were the first car that came up behind the Pontiac? A. Yes.

Q. Then in a few minutes, the panel job came up, is that right? A. Yes.

Q. And where did the panel job stop with respect to you?

A. I don't recall where she stopped.

Q. Did she stop ahead of you?

A. No, she never stopped ahead of me. [374]

Q. So that she stopped behind you, at any rate, is that right? A. Yes.

Q. And then you had no difficulty in passing around the Pontiac with your car when you went to the other side of the bridge?

(Testimony of Pat West.)

A. No, I didn't.

Q. And during the time of your activity there, that car was not moved? A. No.

Q. It remained in that same position so that you had no trouble passing around it with your car? A. No, I didn't.

Q. How many times did you pass back and forth around the Pontiac?

A. I went by him once.

Q. You went by him once when, I mean with regard to the other people being there, was anybody else there?

A. Oh, there was other cars there by that time, there was quite a crowd.

Q. Did you notice how many cars went by that Pontiac while you were there?

A. No. I drove my car by and the laundry truck came through, and they left immediately after.

Q. And they went by, is that right?

A. Yes. [375]

Q. And there was no movement of the Pontiac before you went through, is that right?

A. Yes.

Q. Or before the panel job went through?

A. No.

Q. Had the officers got there, highway patrolman?

A. I don't believe there was any there at that time, no.

Q. So that there was—well, when you went



(Testimony of Pat West.)

through after, cars were on the other side of the bridge?

A. Yes, there was cars lined up on the other side of the bridge.

Q. And was it people from the other side that helped remove Mr. and Mrs. Schoepski?

A. I don't recall where he was from.

Q. But there was quite a few there at that time? A. Yes, quite a number of people.

Q. And you had not then yet moved your car, is that right? A. No.

Q. After you stopped suddenly, then you were unable to start your car right away, right?

A. No, I crossed the bridge in the car.

Q. No, I mean after you stopped suddenly on the east side, you were unable to start your car when you went back to it at first?

A. I crossed the bridge and stopped to pick these people [376] up and then I couldn't start it.

Q. Oh, I thought——

A. My car had been running all that time.

Q. Oh, your car went across the bridge before it vapor locked? A. Yes.

Q. To the west side, is that right?

The Court: Did you say it was running all the time when it first stopped?

A. Yes, I just jumped out and went over there.

Mr. Doepker: That is all.

Mr. Alexander: No redirect.

The Court: Very well, you may be excused.

(Witness excused.) [377]

WILLIAM C. DOVE

Direct Examination

My name is William C. Dove. I am sheriff of Phillips County, Montana. I have been sheriff for approximately two years now and before that I was undersheriff of Phillips County. On the 30th of August, 1955, I was sheriff and I remember the occasion of an automobile collision that occurred on a bridge east of Malta on the last of August, 1955. I am familiar with the bridge by Bowdoin Lake, and I received a call to go out to the scene of the accident. When I first got there, there was lots of traffic lined up on both ends of the bridge, and the ambulance passed me just before I got to the scene of the accident. The ambulance was driving faster than I was. I called the ambulance myself.

Q. Well, where was the traffic when you got there?

A. Lined on both sides of the bridge.

Q. And where was the ambulance when you got there?

A. At the bridge.

Q. Was it on the west side or the east side of the bridge?     A. East side.

Q. East side. The ambulance then had gone through on to the other side?

A. I believe it was the west side. I wouldn't say for sure now where it was. [379]

Q. Okay. Well, whatever your best memory is?

A. I don't really remember which side of the bridge the ambulance was on.

(Testimony of William C. Dove.)

Q. Okay. Well, give us your best recollection of the events that transpired after you got there.

A. Well, they were loading on the people, but I believe it was the west side of the bridge. I couldn't say for sure. I helped, and as soon as we got the people that were hurt and the ambulance left, why I called for the wrecker and the photographer by radio. [380]

I have a radio attached to my car, and I called the photographer and wrecker by radio. It seems to me it was a matter of twenty minutes after I got there before the photographer got there, but I made no record of it at the time and I couldn't say for sure. The first thing that I did after I arrived at the scene of the accident was to help to remove the injured, then inquired if anybody had seen the accident. There were two highway maintenance men there and I talked to both of them and I talked to other people around there that I didn't know by sight and a few I did. I couldn't tell you who they were now. I was left with the impression that nobody had seen the accident. There were quite a few people around there and I asked for eye-witnesses at the time. Nobody came up to say that they had seen it.

Q. Did you see the young man that was just on the stand a moment ago there?

A. Not that I recall. [381]

I did not see him in connection with any activity in moving the people out of the Pontiac automobile or anything of that nature. I was not present when

(Testimony of William C. Dove.)

the people were moved out of the Pontiac and I couldn't have seen the people moved from the Pontiac because I wasn't there. I made an investigation on the ground concerning the accident later after the photographer and the highway patrol. When the highway patrol arrived, with respect to the photographer, the highway patrol arrived there just a few minutes later than the photographer as I recall it, but I was pretty busy with traffic and I couldn't say exactly. I asked the highway maintenance men to take over flagging the traffic. I put one on each end, and I also asked if anything had been moved at the scene, and I was informed by the highway maintenance men that they had wanted to move the Pontiac, but they wouldn't allow it to be moved, and they only moved one fender which would have been the left front fender in order to get a car through in order to take the children to town. They showed me where it had been laying and they marked the spot, and that had been swung around to the right out of the road so that the car could get through to take the children to town. The highway men pointed out to me the position in which the fender was before it was moved and I had them show me where it had been before they moved it and we moved it to the same. At any rate, we put the fender back so the photograph could be taken of it. When the highway patrolman and the photographer arrived, I made an investigation on the ground that at the place that the accident took place. I have had experience in investigating traffic ac-

(Testimony of William C. Dove.)

cidents in my capacity as sheriff and deputy sheriff and previous to being undersheriff and sheriff in law enforcements, but not exactly traffic accidents, but I was with the law enforcements in California for some time. In connection with law enforcement or particularly with respect to traffic investigations, I with Pete Leyman, who is Captain on the Highway Patrol, on a quite a number of accidents prior to the time that he was transferred out of our district, that is while I was undersheriff, and he showed me the procedure that they were trained under, and, of course, I get the F.B.I. manuals which do give you a lot of information which all law enforcement officers get, and I took a course from Boland Academy, criminology and law enforcement.

Q. And have made a study of conditions that appear after an [384] accident with relation to the position of automobiles at the time of collision and so on?

Mr. Alexander: Just a moment, that is objected to as leading.

The Court: Sustained.

Q. What does this study include?

A. Well, general law enforcement, mainly. It doesn't go into traffic accidents too much. [385]

I did not make an independent investigation before the photographer and highway patrol got there, but in connection with the photographer and the highway patrol, I did make an investigation. I am not giving my conclusions, but I will tell you what I



(Testimony of William C. Dove.)

observed. Directing attention to the things that could be seen or be observed on the ground to indicate the position of the cars at the time of the accident or the collision in detail well. There was a Pontiac car sitting on an angle in the easterly portion of the bridge with the front of it across the center line headed in a southwesterly direction. There was a red Buick in the ditch just off the east end of the bridge facing north, sitting right across the barrow pit with the nose of it in the bank on the north side. With relation to the bridge itself, I observed there were markings on the south side of the east portion of the bridge where a car had scraped along the bridge and there was red paint on the bridge, and there was also red paint on this Buick. The highway patrolman and myself measured the markings. I held the tape while he took the figures down, read the tape and marked it in his report book. I noticed the railings on the bridge, and I noticed with respect to the floor of the bridge, debris and there was debris at the front and looking at it, it would be to the right where the collision, assuming where the collision happened, there was debris under the Pontiac there. There was also debris which I assumed to be acid that probably was radiator fluid in the path where the Buick had taken to go into the ditch, and there was something there that I presumed was acid or radiator fluid that followed a course to where the Buick was in the ditch. The acid and radiator fluid was deposited along the south side of the bridge and then in a

(Testimony of William C. Dove.)

left angle to the ditch to the back end of the Buick. It seems to me that the acid and radiator fluid started with respect to the bridge itself as though it was a little ahead of where it hit the bridge, or where it scraped along the bridge. That is where it was most prominent anyway, but there was debris along the edge of the bridge also, and when I say ahead of the point where it scraped the bridge, I mean east of the point, yes it would be ahead of where the car hit the bridge. It would be ahead the way the car was pointed. The debris was on the south side of the road and it swung at an angle around to the north side of the road, and with relation to the Pontiac car, the debris was to the south side of the center line and the front end of it there. The front end was on the south side of the center line and there was debris there on the south side of the center line, with respect to this pile of dirt and directing to the position of the Pontiac automobile, this dirt or debris from the Pontiac, or in relation to the Pontiac as regards to the center of the highway, it was to the south of the center, and with respect to the debris to the west from the Buick car, it was on the south side of the center of the highway. I helped the highway patrolman with the measurements. I do not have the measurements myself, but the highway patrol have all the measurements. I didn't make a record of any of the measurements. I helped the highway patrolman make measurements and he made the sketch. I don't believe that my car is any of the photographs that I have looked at here

(Testimony of William C. Dove.)

in Court. I don't believe it is, it was parked on the west side of the bridge. When I arrived at the scene or upon the scene, and after having had report of the accident and went out there, there were a number of cars parked on the west side of the bridge, that is correct, and there were also cars that were parked on the east side of the bridge. The ambulance removed some of the injured persons and the ambulance arrived just ahead of me, it passed me just before a few miles, let's say 4 miles, before the scene of the accident. I recall telling you about putting the injured people in the car, that you yourself know about, the ones that were taken from the scene of the wreck. There were two gentlemen, and they were placed in the ambulance. I do not know whether there was a lady placed in the ambulance or not. She could have been in the front seat. The two gentlemen were laid in the ambulance in the back part of it, and to the best of my memory that is correct. Mr. Pat West has testified and said that he went in following the ambulance. I believe that is the record.

Q. Okay. Now, I believe that—I don't recall the exact testimony, but I believe that Mr. West said that he went in following the ambulance, I believe that is the record. What I wanted to fix now is what you did when you came out behind the ambulance there on that occasion. Did you have anything on your automobile to indicate you might be an officer or anything of that sort, or what did you have attached to your automobile?

(Testimony of William C. Dove.)

A. I had my blinker lights going, and when I arrived possibly a quarter of a mile from the scene, there was a lot of traffic—I shouldn't say traffic. There was a line of traffic that had been stalled or stopped, and some of them were trying to get out of line and go down, and I was required to use my siren intermittently in order to clear the way so I could get down to the scene of the accident.

Q. So, in addition to your blinker lights, you were using your siren?

A. Intermittently, yes, sir, off and on.

Q. Yes. Now, coming along there, your blinker lights were located on your automobile in what position?

A. There is one on the top close to the front, and then there is a blinker light on my right front fender.

Q. Is there anything on that blinker light on that right front fender?

A. It says, "Stop."

Q. It doesn't say "Sheriff" or anything of that sort?

A. No, sir.

Q. There is no indication in your car that you were Sheriff of Phillips County?

A. No, sir.

Q. Then, as you came up and were passing the traffic that was parked to the west of the bridge, and up to the bridge, when you arrived there, where was the ambulance?

A. Well, to the best of my memory, it was on the west side of the bridge. I know I assisted in getting the injured to the ambulance.



(Testimony of William C. Dove.)

Q. Now, in order to get the injured to the ambulance, were a part of the people who were injured taken from the east side of the bridge to the ambulance? A. Not while I was there.

Q. Not while you were there? A. No, sir.

Q. Then, the ambulance—the people were put in the ambulance from the west side, is that right?

A. That is the way I recall.

Q. All right. Now then after you arrived and pulled off in the position which you have indicated, which I assume was on the west side of the bridge, and near the ambulance, what did you do?

A. I went to the ambulance where a group of people were.

Q. Yes.

A. And the ambulance driver, Mr. Bell, was in charge, and the way I recall, they already had someone on the stretcher. If I recall right, I held the door open and helped him put the stretcher in the ambulance.

Q. All right. Now, then, at that time, did you make any announcement where the group of the people were inquiring about eye witnesses?

A. As soon as we got the injured in, I asked if anybody had seen the accident. I asked several different times, and nobody seemed to have seen it.

Q. At least, if anybody did see it, nobody made themselves known? A. That is correct.

Q. And were those requests of yours inquiring about eye witnesses made only in one position, or was it made around different places on the bridge?



(Testimony of William C. Dove.)

A. Well, I asked at the group that was by the ambulance.

Q. Yes.

A. And that is where the bulk of the people that were out of their cars were.

Q. I see.

A. And then I got on the east side of the bridge, I also asked over there.

Q. So it was on both sides of the bridge you spoke up—in what type of voice did you ask about it, low?

A. Well, I was in my shirt sleeves, and my star was showing very plainly, anybody could see who I was. I wasn't dressed with a suit on, I usually wear a different type of clothing and a big star, nickel plated star, and they knew I was in charge there, and I asked the general group if anybody seen the accident.

Q. Did anybody make a response to that?

A. No, sir.

To go back to the debris, with relation to the Pontiac car and the place on the bridge, my best recollection is that the debris was in the easterly end of the bridge. I suppose you would call it the east third portion, and on the south half and along the side of the Pontiac which would be the left side of the Pontiac, towards the rear, so that from the front to the rear and along the edge of the bridge where I assumed that the Buick had passed. There was debris to the left of the Pontiac and debris on

(Testimony of William C. Dove.)

the south side, along the bridge where I think the Buick evidently went circling around to go where it was, and the heaviest part of that debris was, with reference to the center of the highway, it would be to the south of the center. The debris would be, with respect to both the Pontiac and the Buick, there was debris to the front and left of the Pontiac and along the side of the Pontiac on the left side. In the position that I saw the Pontiac when I got there, the other debris was right along the side of the bridge, the south side, where the car had scraped the side. And compared to the debris which I have described as being near the Pontiac, the debris started right at the front of the Pontiac. The highway patrol and myself measured that across there, but I don't have the figures now, but to the best of my memory, it was directly across from the front of the Pontiac at the edge of the bridge. I recall some markings on the bridge there that Mr. Hardesty and myself measured. Mr. Hardesty, the highway patrolman. There was some sort of marking on the road there. I mean in the pavement itself, and that type of marking was that it was a gouge or a deep scratch. And that gouge or deep scratch, with reference to the position of the Pontiac, it was close to the front, but like I say, I didn't make any map of that, and we measured it, and I was holding one end of the tape, and the highway patrolman recorded it. It is correct that we made a record of the measurements at that time

(Testimony of William C. Dove.)

—Mr. Hardesty, the highway patrolman. And I assisted in making the measurements.

I remained around this bridge and the scene of the accident after I got there on that day, I can't say for sure, but it must have been at least two hours, and during that period of two hours after I arrived there, I was still around. I was around there until both cars were removed and the highway was clear—it must have taken two hours, and during all of that time I had my badge on my shirt as I was around there, and I had my automobile in the immediate vicinity of the bridge with the blinker light attached to it, or the two blinker lights attached to it.

Cross-Examination of Sheriff William C. Dove

When I first got out to the scene of this accident at the west end of the bridge, I said that they were in the process of moving the injured, yes, sir, and I assume that Mrs. Schoepski there, I don't know, I assume that she was the woman who was injured, I never saw her to recognize her. If I cannot assume, well, I don't know, and I don't recall that I saw her, and I never saw the two little children running around there. I heard them mentioned, but I never saw them. On my way out from Malta, I possibly could have met cars coming from the scene of the accident, particularly concerning, or having my attention called to a lavender and white laundry panel, I could possibly have, but I certainly don't remember it. As to whether there was a laundry panel at the scene of the accident, there

(Testimony of William C. Dove.)

was possibly a hundred cars there, maybe more, and there were not a hundred lavender and white ones, no, but there was just about everything else. And with respect to a green station wagon, I do not recall whether I met it proceeding into Malta, and before I got there, I don't recall any specific cars. I don't recall the laundry panel, two station wagons leaving just about at the time I got there ahead of the ambulance, no, I certainly don't. The announcement that I made about witnesses was made while the ambulance was being loaded with one person at the west end of the bridge. After we got the injured out, then I asked the question. As soon as we got them loaded, before anybody pulled out, before the ambulance. I don't know about the vehicle that might have left with, let us say the two children, who apparently were there, or with Mrs. Schoepski. I spoke of debris, and I am not sure what you mean, and what I mean by debris, and have been telling Mr. Doepker about, was pieces of car, pieces of glass, radiator fluid, dirt that you don't normally find on a highway, pieces of the bridge that were present.

Looking at picture No. 5 of Plaintiffs' Exhibit 4, the large whitewashed spot, the large whitish spot in front of the man with cowboy boots shown in the picture, was, I think, if you will recall, is where I said there was a trail left where I assumed to be battery acid or probably radiator fluid that I assumed to be the path of the Buick. There was debris in that, and what this whitish stuff is, I



(Testimony of William C. Dove.)

don't know. I don't know whether it was dirt or battery acid from the picture. From my observation out there that day, I don't recall what it was.

It was quite some feet from where the front of the Pontiac was, that you still found debris. I believe there was fragments of glass, yes, sir. With respect to the ambulance, I don't know how many people went back in the ambulance or whether they were male or female. There were two in the back, but what was in front, I don't know how many, and I have told you that at the west end of the bridge when I came there, they were loading in one person on a stretcher, and that is the way I recall it. I can only give you what I remember, and that is the way I remember it. I believe it's right that there was one man on a stretcher and one was laid along side the stretcher, if my memory is right, was laid on the floor along side the stretcher, and it was a man, it was the last one loaded, and the way I recall it, it was on the west end of the bridge. With respect to the other person who I think was in the ambulance, the first one was loaded on the stretcher and the next one was loaded along side of the stretcher, that was the second one to be loaded, and as to my testimony then that two people were loaded in the ambulance at the west end, that is the way I recall it, yes, sir. I don't recall why you, about your wondering if the ambulance had been at the east end and loaded any. I don't recall the ambulance going through, no, sir. Of course, they got there before I did. When I



(Testimony of William C. Dove.)

first testified as to where the ambulance was when I got there, I said the way I remembered it, it was at the west end, isn't that right. The way I recall it, it was the west end, and that is the way I remember it, yes, sir. I am pretty sure it was at the west end of the bridge and the ambulance was headed towards Malta, west. When I got there, it was headed west. There was an awful lot of people around it, and it was headed west. There was people around it, that is the way I recall it, yes, sir, and I don't know how it got headed west. It was stationary when I got there. Prior to the ambulance being headed west, I don't know how the ambulance got there. Between the time when I went to the west end and the people were loaded in the ambulance, when the ambulance left I contacted the two highway maintenance men that were there and asked them, I don't remember which one took, but I asked him to flag traffic, and asked him if parts had been moved or if anything had been touched. Then I went to the east end of the bridge and there I saw the Buick, well, I talked to the undertaker before that, asked him about the party in the car, of course, and then I went over to the end, on that end of the bridge to the Buick, yes, sir. The Buick had gone down the bank when I arrived there it was setting across the barrow pit, just about in a horizontal position. Horizontal with the axis of the highway, well, just about level, down in the barrow pit, across the barrow pit, and its nose was up in the bank.

## DOUGLAS HARDESTY

## Direct Examination

My name is Douglas Hardesty. My occupation is that of a Montana Highway Patrolman, and I was such a highway patrolman on the 30th of August, 1955. During the early morning of that day, I was called to a accident that occurred east of Malta. After receiving the call, I was notified by radio, by the sheriff's office of Phillips County, approximately at 9:50 a.m. After getting the call, I had a man in custody and I stopped and left him at the County jail in Malta, and the undersheriff had been notified. I called him by radio and told him I had a man I wanted to leave in his custody, so I pulled up to the jail and turned the man over to the undersheriff and proceeded to the scene of the accident. I have a note made of the time that I arrived at the scene of the accident and it was 10:25 by my watch. When I arrived at the scene of the accident, I found Mr. Dove had already arrived and had been there for some time. Mr. Coles, the photographer, arrived subsequently, because after I saw the type of accident, I called the sheriff's office on the radio and asked that the photographer be notified. He had already been notified and was on his way out.

As to whether I have an independent recollection of what I discovered there at the scene of the accident or having a memorandum, yes sir, I have made a diagram at the time at the scene of the accident, and the diagram includes measurements, the length

(Testimony of Douglas Hardesty.)

of the bridge, the width of the bridge, the distance from the east end of the bridge to the first marks on the south rail, the distance from the east end of the bridge to the mark which I believe to have been made by the Pontiac on the north side of the bridge, and the distance from the front end of the Pontiac in its position that I found it to the south railing, not the railing itself, but that portion which they call the stringer, which is on the road bed. I made measurements to that, that is, the effective width, and I have my notes here and I can tell you what other measurements were made by me. In addition to those measurements which I described, I measured the gouge mark, a deep scratch, which was between the Pontiac and the south side of the road, and I measured that in reference to its position between the Pontiac and the bridge, measuring to the bridge. Also, I didn't measure with a steel tape, but I stepped off the distance from the east end of the bridge to the rear of the Buick. I mentioned the length of the bridge, and the width and so forth. I made two measurements in regard to the Pontiac, one from the easternmost position to the bridge and one from the westerlymost position to the bridge. That would be the front end of the Pontiac. It was sitting at an angle. I also measured the length of the marks on the south side of the bridge which I attributed to the path of the car going towards the east, which was the Buick, and made a note of a gouge mark which was nearly between the ends of the bridge on the east side with relationship

(Testimony of Douglas Hardesty.)

to its distance from the south side, and it was in the path that one of the cars took, and I made a note of its position. I don't know whether or not it shows on the photograph or anything, but I made a note of it in my notes. I believe that is the extent of the measurements that I made. From the records and measurements that I have made, I am able to sketch upon the Exhibit that is on the board the position of the Pontiac when I arrived there, and the indications that I stated that I measured on the ground, and I can do that.

(Here the witness, during a 15-minute recess, makes a sketch on the Exhibit.)

I have now sketched in some measurements that I made on the bridge at the time that I arrived and during the time of my stay there following this accident. I will indicate my measurements now to the Judge that I made during the recess, and show him what they are. I got the bridge to be 96 feet long. He shows it 96 feet  $\frac{1}{8}$  inch (Plaintiffs' Exhibit 34). I didn't make any change there. I measured 19 feet 1 inch, measuring this end of the bridge from the bottom stringer to the bottom stringer on the other side, showing only the actual road surface. I measured from the vehicle that was on the bridge, from this corner to the bridge was 6 foot 10 inches; from this corner of the vehicle to the bridge was 6 feet even (indicating).

Six feet ten inches is the first measurement and



(Testimony of Douglas Hardesty.)

the angle it was sitting was approximately this angle (indicating). It is about 18 feet from the bridge to this measurement here (indicating). I measured from this end to the first contact of any roughening of the bridge and found it to be 38 feet 8 inches, counting a projection which is not shown on this map. It would be one foot shorter. There is a little plank sticks out an exact foot. Then the bridge is scraped—there is paint on it for a distance of 19 feet in various spots. The last 19 feet 8 inches bore no evidence of contact. The colliding occurred in the first 19 feet, measuring from the westerly end. The west end of my measurements. I measured all mine from the east end of the bridge. Now, there was a gouge mark on the highway 2 feet 5 inches in length between the Pontiac car and the south railing of the bridge in this relative position (indicating). The west end of the mark was 5 feet 5 inches from the south portion. The eastern edge of the gouge was 4 feet 7 inches, indicating that the gouge had been made at an angle in reference to the length of the bridge. This mark out on the end which I have indicated was a mark I noticed. Apparently it was fresh. It was apparently made by one of the vehicles. There was a mark about 2 feet long, 5 feet 7 inches from the eastern end of the bridge to the north.

I have now indicated on the sketch the angle of the Pontiac, or the approximate angle of the Pontiac car as I found it on the bridge when I arrived there after the accident had happened. And I also



(Testimony of Douglas Hardesty.)

indicated on the sketch the first point which there appears a gouge or a paint mark. I have one measurement I have a note of here that I would like to add here. There is a bumper mark, what I believe to be a bumper mark, 5 feet 4 inches on the side of that railing, the south of the railing. Yes, sir, on the south railing. Five feet four inches. That is a gouge mark which I believe to be made by the rear end of a bumper. I don't believe I mentioned this little mark which I have made to the rear of the Pontiac, which is 25 feet 4 inches from the eastern end of the bridge, and I believe that mark to have been made by the Pontiac's rear bumper.

On that occasion, I observed debris or droppings off of automobiles in that vicinity. There was evidence of dirt, wood chips and some radiator, or fluid which I believe to be radiator fluid strewn around in that area. Before I arrived, someone, or some groups had picked up some of the metal parts of the car and placed them more or less in a pile down at the east end of the bridge, so I didn't make any specific mark showing any particular part of the cars, because as far as I know, those pieces had been moved. However, I did observe wood chips, radiator fluid and some dirt. With respect to those wood chips, radiator fluid and articles which I mentioned, and with reference to the center of the bridge, I may show on my diagram here where I show the wood chips. There were wood chips in this particular area right here, in

(Testimony of Douglas Hardesty.)

relation to the Pontiac car it would be south, near the point where I saw the scrapings on the bridge itself, they weren't large but they were present, that is the wood chips. There was some dirt under the front end of the Pontiac which was not apparent. After the Pontiac had been lifted up and moved away, there was a little dirt on the road to the rear of the Pontiac back here (indicating), not a great deal. I recall dirt in this area only along the front end of the Pontiac. There had been some drainings from the Pontiac which had run out of the radiator and had run to the west. I believe one of the photographs shows that.

Looking at photograph No. 3 of Plaintiffs' Exhibit 4, I was present when that photograph was taken, with reference to the bridge. Photograph 3 of Exhibit 4 correctly shows the position of the Pontiac car at the time that the photograph was taken with reference to the bridge, and indicating to Judge Murray the marking on the bridge that I believe was made by a portion of the Pontiac right there, sir (indicating), and I will describe that marking. It was a gouge and a mark. It looked as though something had been rubbed along there under pressure. The wood was depressed, and it was a mark such as you would get if you would put a heavy pressure on the board, gouged in there. It starts at the bottom and goes up at an angle. The first portion of the mark is lower than the last portion is and it appears on the top railing of the bridge on the north side. I have indicated, of

(Testimony of Douglas Hardesty.)

course, on the diagram and the measurement, the places on the east end of the bridge and along the south that bore the markings that have been indicated on this exhibit as nearly as I could, and I measured from the extreme end of the bridge. There is a small protruding portion which does not show on the diagram. It is about a foot in length. It is present on one of the pictures, it can be observed.

Paying attention to Plaintiffs' Exhibit No. 6, I indicate from that photograph the places that I found paint marks on the occasion of my examination. It was right along this area here for a period of 19 feet, right there, from there easterly for a period of approximately 19 feet, and it started in the vicinity of post No. 7 from the east. It would have to start east of post No. 7 and the mark is visible here. With regard to those paint markings along there, I don't know of my own knowledge whether they were there prior to the accident, I don't but they appeared to be fresh, made with red paint. I made an examination of one of the cars to see whether there had been any paint scraped off of it, and my findings in that respect were that on the right side of the Buick there was white paint which appeared to be from the bridge and the paint had been scraped down to the bare metal in some areas. There weren't any great large areas where it was scraped down to the bare metal, but the evidence of scraping was present.

Looking at Plaintiffs' Exhibits 13, 14, 15 and 16,

(Testimony of Douglas Hardesty.)

I examined those photographs, the said exhibits being photographs, and I recognize the vehicle and the scrape marks on it, and you can recognize the vehicle in the picture and the scrapings along the side, and those scrape marks are very much, even identical, to those I saw on the car at the time of the accident. I remember the position of the car in the barrow pit. The Buick had sloughed around from its own side of the road across the opposite traffic lane and had entered the barrow pit east of the bridge approximately 45 feet from the point it left the bridge, and it was nosed up against the cut bank of the barrow pit on the north side, and the rear was clear of the highway and sitting there at an angle, the lowest portion of the barrow pit about in the center of the car, and the entire vehicle was off the oiled surface of the road, and the vehicle was sitting in such a position that there was a space below it, and the barrow pit was run underneath it. The bottom of the barrow pit was about under the center of the vehicle, and the Buick would be across, but not right down in the bottom of the barrow pit, its nose wasn't in the lowest portion of the barrow pit. I have made an investigation of this collision and since have observed markings on the bridge. I was out there last week, and I can tell his Honor that as far as the markings at the easterly end of the bridge are concerned along that area, they are approximately in the same position they were right after the accident, yes, sir, they are still there.



(Testimony of Douglas Hardesty.)

Looking at Plaintiffs' Exhibit No. 17, being a stereoscopic view, I recognize the exhibit and what is shown in that stereo view, and it is one of the markings that was on the bridge right after the accident, that is, the gouge mark which I had reference to on the guard rail.

I recognize Plaintiffs' Exhibit No. 18, being a stereoscopic view, it is another angle of the same mark on the south side of the bridge.

Looking at Exhibit No. 19, I recognize that exhibit, being a stereoscopic view, that shows the south side of the bridge where the paint marks from the red vehicle from the extreme westerly end, or the extreme easterly end of the gouge mark. At the time of my investigation, right after the accident, it was present on the bridge at that time.

Looking at Exhibit No. 20, I recognize that exhibit. It is the south side of the bridge showing the paint marks east of the gouge marks, this is just an abrasion mark, where the car slid along the bridge rail. Referring to Exhibit No. 20, a stereoscope view of the view, yes, sir, it shows another portion of the bridge. This one is backwards, if it is put in in this position, it shows the southern end of the bridge.

Exhibit No. 24 shows the southern end of the bridge in its entirety and this is the best picture. That shows the whole picture right there. It actually compiles several of them into the one picture. These stereoscopic exhibits correctly show the con-



(Testimony of Douglas Hardesty.)

dition that existed on the day of the accident after I got there and examined it. As far as the coloring on the bridge and the splintering on the bridge is concerned, the southern side of the bridge, they show the condition. There are all a little different picture or angle of what I have previously described and marked on the sketch. That is correct. Exhibit No. 24 is the best one, and I believe it portrays the south side of the bridge most honestly. From the appearance upon the bridge or markings approaching from either side, it did not appear that either one of the cars had braked, or had brakes applied before the collision.

Q. And from your experience as a Montana Highway Patrolman, and from your experience as an officer examining scenes after the wreck, where did the collision take place on the bridge?

Mr. Alexander: Just a minute, that is objected to as calling for the conclusion of the witness.

The Court: Sustained. Do you have any authority, counsel, that he is entitled to make such a conclusion?

Mr. Doepker: Well, your Honor, the only thing that I figured was that a witness of experience looking at a scene after—and describing it first to the Court and showing the position of the vehicles and the markings that appear on the highway, then, he relates a series of facts which your Honor can decide for yourself——

The Court: I don't think it is admissible, but to give you [426] an opportunity to present the

(Testimony of Douglas Hardesty.)

evidence, I will reserve ruling on the objection, and he may answer, and you can submit a brief with reference to it.

Mr. Doepker: Well, I would like to make a short qualification of the witness, and then I will call your Honor's attention to a case which my associate has refreshed my memory on.

The Court: Very well.

Q. Mr. Hardesty, how long have you served in your capacity as Highway Patrolman? [427]

I have served as a Highway Patrolman fifteen and a half years, with exception of the period I spent in the Navy during the war, a four-year period in the Navy during the war. I have had occasion to examine numerous accidents and numerous indications on highways after an accident has happened, and I have had the normal training they give a Highway Patrolman at the beginning. We have a six-week course at that time. Subsequently, we have various courses which are administered, the last, a period of about two weeks, which we had traffic investigation data given us. We are supplied with manuals which are published by the Northwestern Traffic Institute of the Northwestern University, and several of our Supervisors have attended there, and they have attended meetings and passed on information they obtained there.

A. Well, I expect that I have investigated over 2,000 accidents, well over that many.

Q. And, now, let me ask you this question: From your examination of the accident in question and

(Testimony of Douglas Hardesty.)

the automobiles involved, the markings you observed on the highway, do you believe that you know or reasonably know where the collision in this accident took place with respect to the bridge?

Mr. Angland: Just a minute, the question is objected to as duplicitous. He asked if he knew or if he reasonably knew. We object to the form of the question.

The Court: Sustained. Find out whether he is telling us what he—whether it is an opinion or a guess.

Q. Well, will you tell us—

The Court: Or if he has an opinion on the matter.

Q. Do you have an opinion, based upon your training and upon your examination of the accident in question, as to the place on that bridge where the collision took place, the impact took place?

Mr. Alexander: Now, just a minute. That is objected to on the ground that the question is duplicitous. It is apparently a sort of a hypothetical question without stating the facts upon which the hypothetical question is based.

The Court: Yes, it is. By its very nature it has to be a hypothetical question. Now, you can require him to set forth all the facts that are necessary for the witness to express an opinion.

Mr. Doepker: He has already done that in his testimony.

The Court: Well, I think so, I think that that

(Testimony of Douglas Hardesty.)

is true, and we are probably all aware of it, but I think for the record, he would have to show, you would have to ask him what facts he bases his opinion on, the places and the amount of debris, and the amount and places of scrapings and the position of the car when he found it, or the cars, and——

Q. Well, then let us ask him first, in order to lay a foundation, a question that he can answer yes or no, and ask him—I ask the witness—I ask you if you have an opinion at this time where the collision between those two cars occurred with relation to the bridge?

A. Yes, sir, I do have an opinion.

Q. And what is that opinion based upon? Relate the things that you are taking into consideration to base your opinion on?

A. Could I step over to the diagram, your Honor?

The Court: Yes.

A. Well, as to what happened back here or back here (indicating) I can't say. There is a condition on the east side of this highway which, unless you correct——

Mr. Alexander: Just a minute, we object to any condition on the east side of the highway.

A. It is related to this thing, in my opinion.

Mr. Doepker: I think he is entitled to answer the question.

The Court: Yes, you may tell what your opinion is based on.

A. All right—which, if you were, at the time

(Testimony of Douglas Hardesty.)

of this accident traveling from the east to the west, and didn't make a correction, as you came here, the crown of the road slants from the center to the northerly edge, and it is perfectly normal for you to correct——

Mr. Alexander: Now, just a moment. We object to the witness testifying what would be perfectly normal under the circumstances——

A. Well, if you don't want to hit the bridge, now, let's put it that way.

The Court: Well, in the first place, we are away off base. He is now testifying and basing his opinion on something that isn't in evidence, so let's go back. If you can't ask him the proper hypothetical question, why it's just too bad. We are not going to have him testify—you better present the proper question to him, or the objection will be sustained. We are not going to let him ramble on. You see, he has already started to talk about something that is not in evidence.

Q. Well, are there any facts that you have not related about this accident that is required for you to arrive at your conclusion of the place that this accident happened on the bridge?

A. No, sir, this portion back here is my own idea.

Q. All right.

A. The facts which I believe would indicate——

Mr. Alexander: Now, don't state what you believe. Just tell us what the facts are that you are relying on, Officer.

A. All right. This Pontiac has assumed an angle



(Testimony of Douglas Hardesty.)

here across the bridge occupying a portion approximately 18 feet, and the left hand front of the Pontiac is six feet 10 inches from the south rail. The south side of the Pontiac, the front portion on the left hand side is six feet from the side. There is red paint extending from two-thirds to three-quarters of the distance across the front of that Pontiac; south of the Pontiac on the bridge railing for 19 feet is red paint from the Buick. The distance through which this Buick would have to pass at the most here is six feet 19 inches. The width of the Buick is slightly over six feet, which would put the Buick up against the Pontiac on this side, and up against the bridge on the other side. There is no evidence of any accident west of that, so it is my conclusion that the Buick——

Mr. Alexander: Now, just a minute. We object to your conclusion, just keep telling us facts.

A. Well, you asked why I thought that.

Mr. Doepker: He has related——

The Court: Those are the facts.

Q. All right, now, based upon those facts, where, in your opinion, did the collision take place on that bridge?

Mr. Alexander: Just a minute, just let me make an objection, Officer. That is objected to upon the ground that it calls for a conclusion of the witness, that it relates to a subject which is not a proper subject of opinion evidence, that no foundation has been laid for any such opinion.

(Testimony of Douglas Hardesty.)

The Court: Well, I think your objection is good, counsel, at this point, but in order to preserve the opportunity for counsel to do it, I'll reserve ruling on the objection, and you may answer the question, but it is a matter you will have to submit authorities to me on.

Mr. Doepker: All right, I will submit the authorities to you later.

The Court: You may answer the question.

A. Would you read the question back, please?

(Question read back by Reporter.)

A. Well, I would say that the collision would have had to have taken place very near the front portion of this Pontiac in its present position, very near that, because there is no debris or anything which would lead me to believe it had taken place in another area.

Q. And on which side of the highway, north or south?

A. Well, it would be to the south of the center portion of the highway as I have concluded from what I saw there.

Q. All right, you may resume your place.

Mr. Doepker: The case of *State vs. Bosch*, your Honor, from Yellowstone County. I will give you the citation.

The Court: I noticed, Mr. Hardesty, that when you answered the question as to the point where the collision occurred, you pointed to the right hand side of the——

(Testimony of Douglas Hardesty.)

A. In that area with reference to the bridge, not to the Pontiac in its present position, that car having swung. That car could hardly have been going through the bridge at that angle.

The Court: Well, when you pointed to that corner, to the right hand front corner of the car as it is depicted on the sketch, is that the point where you think contact was made?

A. Right in this area, yes, sir, I believe it to be there (indicating). The car was carried across in that position. That car normally could not go through the bridge at that angle. It would be going parallel to the side of the bridge, or if it were not, before you went 90 feet, you wouldn't be in the road at all.

Q. (By Mr. Doepker) You may resume your place. Now, Officer Hardesty, were there any skid marks apparent on either side of the point of collision, that is, skid marks showing that brakes had been applied on either vehicle?

A. None that I could attribute to either of those vehicles, no, sir.

Q. Officer, have you examined vehicles in the course of your examination of highway accidents to determine the application of force to the front or sides of a vehicle?      A. Yes, sir, I have.

Q. And I believe one of the witnesses who has testified out of order, to save calling you back to reach the subject, testified that there was a collision and a careening, or a careening against the side, the south side of the bridge, and then against the

(Testimony of Douglas Hardesty.)

side, the south side of the bridge, and then describing an arc in front of the witness. Now, if there had been, if the Buick car had, we will say, been forceably struck against the bridge with its right side, do you believe that it would show or would not show more evidence of damage than appears in Plaintiffs' Exhibits 14, 13, 15, and 16?

Mr. Alexander: Just a minute, Officer. To which we object upon the grounds and for the reason that the question assumes a state of facts not shown by the evidence, some reference to forceably slammed against the south rail; that the question calls for a conclusion of the witness in a matter on which the witness is not qualified or competent to answer.

The Court: Yes, the objection is good. There is no basis upon which he can make an opinion, no evidence whether the Buick was slammed or driven or whether it just barely scraped the side, or what the circumstances were of that.

Mr. Doepker: I don't have the benefit of his testimony, but I may have to call the officer back. I hope not, but my recollection was that it careened off of the wreck and banged against the side of the bridge and went on through. I don't know to what extent it went, but that is my recollection.

The Court: Well, what do you want him to testify about?

Mr. Doepker: About damage to the side of the Buick in an accident of the kind that was described by——

The Court: The damage is going to be, we all

(Testimony of Douglas Hardesty.)

know, the damage is going to be just relative to the amount of force with which the Buick hit the rail.

Mr. Doepker: Correct, your Honor.

The Court: And that is all. It is not going to be any greater or any less. What can he testify to? If there is slight damage, he just barely scraped it. If there is great damage, it was with greater force and thrown harder against it. It just depends.

Mr. Doepker: You may inquire.

#### Cross-Examination

By Mr. Angland:

Q. Officer Hardesty, I think you testified with reference to this diagram that the angle of the Pontiac is not intended to be accurate by this diagram?

A. Well, it would be relatively close, but not entirely so.

Q. Actually the two front wheels of the Pontiac would be, one would be in a northeasterly direction from your most westerly point here, wouldn't it?

A. Well, the inaccuracy there lies in this angle. That Pontiac was setting so that the measurement was six feet 10 inches from that corner to the bridge, and six feet from the right front corner to the bridge, so the degree of bending and so forth, I didn't have an accurate way of showing it on the diagram.

Q. The degree of bending and so forth?



(Testimony of Douglas Hardesty.)

A. In other words, this is only an approximation as to the angle that front has been damaged.

Q. Now, would the damage to the front end, and the position of the Pontiac be affected by the direction in which the Buick was traveling, that is, whether the Buick was traveling parallel to the southerly rail, or whether it was, say, in the middle of the bridge and then made a right turn to avoid a headon collision and get back on its proper side of the highway? Is that a possibility from the damage to the front of the car and the position in which you have illustrated the Pontiac was found?

A. Yes, sir, not being able to tell, which I stated, the exact angle at which the Buick hit the Pontiac, or the reverse, with which the Pontiac hit the Buick, there would be a difference in damage if you hit at an angle, yes, sir, there would. To that question, I would have to answer yes.

Q. If the Buick was traveling as I indicated?

A. In other words, if it was approaching so it was turned at the time.

Q. If the Buick entered the westerly end of the bridge astraddle the imaginary center line here—it isn't painted—the center line of the bridge and then turned to the right to avoid a headon collision and didn't get far enough over, you could have this result, couldn't you?

A. Well, certainly——

Q. It is a possibility?

A. It is a possibility. The angle, of course, must be figured, and you must know the direct angle of force. It would be a trigonometry problem, and

(Testimony of Douglas Hardesty.)

angles of force can be figured if the circumstances are known.

Q. Officer Hardesty, did you measure the distance from the first gouge that you noticed on the southerly rail of the rail or of the bridge, did you measure the distance from there to the point at which the Buick came to rest in the barrow pit east of the bridge?

A. No, sir, not in one tape measure, no, sir. I measured the distance to the end and then over to the Buick. In other words, it was two separate measurements, yes, sir, which would be approximately seventy—very nearly 80 feet from the first gouge on the bridge to the nose of the Buick.

Q. The Buick traveled 80 feet?

A. Yes, sir, very close to 80 feet. In fact, I believe it would be approximately 82 feet.

Q. And is that measuring from the first gouge to the back end of the Buick?

A. You would have to go around the front wheel where it was up against the bank.

Q. Does that make allowance for the quarter circle or arc?

A. Yes, sir, because you are measuring down to the end of the bridge and then around to the front of the Buick.

Q. Directing your attention, Officer Hardesty, to Photograph No. 12 of Plaintiffs' Exhibit 4, do you see some marking that I am indicating with my pencil here and here and here?

(Testimony of Douglas Hardesty.)

A. Yes, sir, here is the mark I put on the diagram.

Q. You are referring to the gouge?

A. Yes, sir.

Q. Now, did that gouge you are referring to appear to be straight easterly and westerly, or did it appear to run in an arc shape?

A. Well, an arc, as I understand it, would be a portion of a circle. It runs more straight than that, but the measurement would be such that in a distance of two and a half feet, it had moved from five feet five inches at the westerly end to four feet seven inches on the easterly end, so that it would be making an oblique mark toward the side of the bridge.

Q. Indicating then that that mark was made by some instrument which was moving in, we will say, from the northerly edge of the bridge to the southerly edge of the bridge, although it was only a short distance?

A. Yes, sir, it is two feet five inches long. It is slanted as I indicated there.

Q. It indicates it was made by something moving in that direction?

A. Yes, sir, that is correct.

Q. Now, directing your attention further to some marks in this same photograph beginning in the border of what has been referred to as some debris in the middle of the photograph, and moving across, appear to drop at one point toward the bottom of the photograph, and possibly pick up further, do

(Testimony of Douglas Hardesty.)

you recall seeing any marks at the scene of the accident that are portrayed in that photograph, those particular marks? Do you recall seeing those at the scene of the accident?

A. Yes, sir, I recall seeing those marks, but after the Pontiac had been picked up, these first marks you showed me——

Mr. Angland: Does your Honor know which ones I am talking about?

The Court: Yes.

A. This portion was covered by the Pontiac before it was moved. These scuff marks were there, but they are not in the nature of digging into the oil. This one is, this mark here. These are more scuffed on from dirt, you see. This is a gouge, where this is a scuff.

Q. Now, did they all appear to run in the same general direction, moving from the northerly to the southerly direction?

A. Well, I can't say, I can't answer it honestly and say yes.

Q. I don't want you to answer it if you can't answer it honestly.

A. No, sir, I can't say that all those marks moved in that direction. Those that you point out to me and that gouge mark did move from being farther north on the west portion to farther south on the south portion. They were farther north on the west portion, and they moved toward the south as you go east. That is probably the clearest way of saying that.

(Testimony of Douglas Hardesty.)

Q. That is what I am getting at, that's right. Officer Hardesty, could those marks be tire marks, what you officers refer to as tire burns?

A. I don't believe they could.

Q. You don't believe those could have been made by an automobile tire burning its way across the highway?

A. No, sir, I don't.

Q. And you don't think they are skid marks from a tire?

A. This mark here is only in the dirt, and I don't believe it could be connected to the impact. I believe it to be connected from something that has gone through there afterwards.

Q. Of course, Officer Hardesty, the Buick automobile did go through there after the impact?

A. Yes, sir, but not at that angle. You see why? The angle of this mark would not allow it to have gone through the bridge if it went there, the angle there is different. In other words, I don't believe that the angle the Buick was traveling is compatible with the possibility of the Buick having made this mark.

Q. Having made those marks, as I have indicated them to be possibly tire burns?

A. Well, the gouge mark I do believe to have been made by the Buick.

Q. You do?

A. Yes, sir, I do. I do not believe that this mark was made by either of the two cars. I think the mark in question there was made by one of the



(Testimony of Douglas Hardesty.)

vehicles that went through either prior to moving this or afterwards.

Q. Let me ask you a question, Officer Hardesty: In testifying in response to Mr. Doepker's questions concerning your experience and all, and bearing that in mind, if an automobile collides, we will say, a very fast automobile, does the debris drop immediately, or does it go through further with the force?

A. Well, let's put my answer in this manner: That the debris, if there were droppings from the car, which most would have dirt and so forth under them, they would tend to go in the direction of the force, yes, sir.

Q. And you found the debris that you have referred to in your testimony directly under the front of the Pontiac?

A. Yes, sir, there was debris under the front of the Pontiac that was apparent after the Pontiac had been lifted up, that is correct.

Q. And much of the parts that had been torn off the automobiles, I believe you said, had already been moved and cleared out of there by the time you got there, piled at the end of the bridge?

A. There was a bumper guard and several metallic pieces which had been picked up and placed at the east end of the bridge, and I believe one of the photographs shows them to be in that position, so what their position was prior to that time, I have no way of knowing.

Q. So you don't have the assistance of the location of those parts——

A. No, sir.

(Testimony of Douglas Hardesty.)

Q. —in making your determination as to the cause of the accident, or where you might think the actual impact took place?

A. Well, bearing in mind what assistance they might be, I would not have that, you are correct.

Q. They would be of some assistance if you knew exactly where those were immediately after the accident, it would help you in determining the point of impact, wouldn't it?

A. Well, if you could tell directly where those hit afterwards, yes, sir.

Q. If they were left alone.

A. Of course, where they might end up, you might not be able to tie them in except that they were traveling in that direction with considerable force. It may or may not help, yes, sir, you are correct.

Mr. Angland: I believe that is all.

### Redirect Examination

By Mr. Doepker:

Q. I would like to ask two questions I overlooked. Are you familiar with the measurements of the cars that were involved in this accident as to width and length and the weight? Do you have any way of giving us that?

A. I don't have their definite weights, no sir.

Q. Do you have their measurements?

A. Yes, sir, I do have, I do know their length and width of those particular models.

(Testimony of Douglas Hardesty.)

Q. Will you give us the length and width of the models?

A. The length of a 1952 Pontiac is 202½ inches over all. The width is 75 11/16 inches. A 1955 Buick of the series involved is 206.7 inches in length, and 76¼ inches in width.

Mr. Doepker: Nothing further.

### Recross Examination

By Mr. Angland:

Q. Do you know the weights of the two automobiles, Officer Hardesty?

A. No, sir, I don't, I can't tell you exactly now. The day I obtained the length and width, I did obtain the weight also, but I didn't mark it down. The Buick is slightly the heavier of the two. It wouldn't be at all hard to get their weights. It is very easy to get the weights of those cars. The distances I gave is not the wheel base, it is the over-all dimensions.

Q. These are over-all dimensions?

A. Yes, the wheel base of a car is different than the over-all length. The wheel base is figured from the center of the axle to the center of the axle, the over-all length is from bumper to bumper, and the tread of a car is not the true width. The tread is—the over-all width is figured from the widest portion of one side of the car to the widest portion of the other.

Q. That is the way you measured the Buick?

(Testimony of Douglas Hardesty.)

A. No, sir, I didn't measure either one of these cars due to the damage involved. I obtained the measurements from the dealers.

Q. And the widest part of the Buick is 76 $\frac{1}{4}$  inches? A. That's right.

Q. Is that the front or the back that is the widest?

A. Well, sir, I wouldn't—it would be almost identical from the front to the back.

Q. That is 76 $\frac{1}{4}$  inches. You have a measurement, I believe, your easterly measurement from the front end of the Pontiac to the southerly end of the bridge—— A. It is 72 inches.

Q. 72 inches.

A. Six feet is 72 inches. I marked it six feet, and he mentioned it the other. I said six feet is 72 inches. I might point out further, too, now, that the measurements I pointed out were made from the inside of the stringer, which is a little over four inches in width, and consequently, this measurement is on the floor of the bridge, and it would put the bridge rail an additional four inches farther from the Pontiac. I stipulated that those measurements were made to the inside edge of the stringer which you have a picture of there, which would be closer to the vehicle than the bridge railing itself. If you bring a picture, I will show you.

Q. I know what you mean. The sleeper or stringer is four and a half inches, or four inches wide? A. A little over four inches.

Q. Then, your railing sticks out a little over two

(Testimony of Douglas Hardesty.)

inches? A. Yes, sir, that's right.

Q. So if we have got an automobile between the railing, if this measurement runs to the railing, it would be six feet two inches?

A. Whatever the difference between the stringer and the——

Q. Two-inch plank of the railing?

A. That is correct.

Q. So it would be about six feet two, or two and a half inches, wouldn't it?

A. Yes, sir, but I stipulated on the diagram that I measured on the floor of the bridge.

Q. Yes. What I am getting at is the front easterly front corner of the Pontiac and the railing of the bridge, couldn't be over six feet two or two and a half inches?

A. Well, in addition, to getting down to measuring a wreck of that sort, or damaged vehicle, the portion that I measured from there could possibly vary an inch one way or the other. I mean you couldn't possibly say that this is the only spot in which you could measure this vehicle. It was as close as I could measure it with the equipment I had on hand.

Q. Well, we have more than an inch one way or another, I think, involved with your figures.

A. That's right.

Q. Now, have you examined the photographs that are in evidence in this case, Officer Hardesty?

A. Well, I have seen them, because that is how these photographs so that I could look at them also,



(Testimony of Douglas Hardesty.)

and I did have a set which I looked through in Mr. Coles' studio, and I have subsequently seen them at various times.

Q. I am looking at what I think is No. 15 here. Directing your attention to Photograph No. 15 of Plaintiffs' Exhibit No. 4, now the left hand side, or the left side of the Buick is damaged back to a point near the rear door, isn't it? A. Yes, sir.

Q. Did you examine the Buick?

A. Yes, sir.

Q. Did you find damage, well, let's say a point just in front of the rear wheels back?

A. Well, let's say that I didn't see any damage from here back.

Q. You are indicating a point just in front of the right rear wheel—that would be the left side of it, wouldn't it, rather than the right?

A. This is the driver's side that he is showing me.

Q. Now, there was no damage from a point just in front of that rear wheel on the driver's side of the car to the back end of the car, and the back bumper was not torn off, was it? A. No, sir.

Q. Now, directing your attention to Plaintiffs' Exhibit No. 13, that, I believe, has been identified as a picture of the opposite side of the Buick?

A. Yes, sir, that is correct.

Q. Did you find the rear half, or the portion of that Buick back of the rear wheel on that side of the Buick caved in or damaged? A. Yes, sir.

Q. Was it caved clear in?

(Testimony of Douglas Hardesty.)

A. Not caved clear in, you said caved in or damaged.

Q. I beg your pardon, that was a duplicitous question. You did examine it? A. Yes, sir.

Q. Was it caved in?

A. Well, it is grooved.

Q. But actually, the body is pretty well intact at that part? A. Correct.

Q. So, the back end of the Buick, from the front of the rear wheels of the Buick——

A. Is pretty well intact.

Q. And also the bumper on the back of the Buick appears to be intact on that side as well as on the opposite side?

A. The bumper of the Buick here is the portion of the car which I believe tore that top part of the stringer off in the photograph which has been shown. That is where I believe that damage occurred, and there is evidence on the bumper that made me believe that.

Q. Well, the question I believe was, the bumper is intact?

A. Yes, sir, but you inferred that it wasn't damaged.

Q. No, I didn't infer that it wasn't damaged, I didn't see it, Officer.

A. Well, you asked me in the question before.

Q. Those two pictures illustrate pretty well the condition?

A. Pretty well the condition; in fact, almost exactly, that is correct.

(Testimony of Douglas Hardesty.)

Mr. Angland: Thank you, that is all.

Mr. Doepker: May the officer be excused?

The Court: I wonder—when you testified with reference to the point of the contact——

A. Yes.

The Court: Is there any evidence of what portions of the cars contacted?

A. From the evidence shown, the fact that they locked left front wheels, yes, sir. The left front wheels locked hard enough to bend the frames and wheels, so the point of contact would be very nearly at that point on the automobiles, yes, sir, there is.

The Court: Is there any—so the left front wheels locked at this point?

A. Well, at some point in that area.

The Court: And then, was the Pontiac driven back?

A. I would say it was driven back and sideways.

The Court: Well, is there any evidence on the road that it was driven back?

A. Yes, sir, there is.

The Court: What evidence?

A. Several gouge marks that this picture shows.

The Court: Did you put any of those marks on this map?

A. There are some marks where the Pontiac was sitting that were revealed after the Pontiac was raised, and they show gouge marks which I believe were caused when the Pontiac was pushed back.

The Court: Well, were the gouge marks made

(Testimony of Douglas Hardesty.)

before the debris was deposited there, or afterwards?

A. I would say about the same time. This mark, I believe, was made as the Buick tore on by.

The Court: Well, wouldn't the debris you have already testified to, wouldn't debris have been deposited at the point of impact?

A. Very nearly so.

The Court: Well, then, if it was deposited at the point of impact, and there was then later a dragging, the debris wouldn't have been under it.

A. Well, there is some dirt there——

The Court: Yes, quite obviously there is.

A. That would have to come from one of the two vehicles.

The Court: Why?

A. Well, at the time when the Pontiac was sitting in place, that was covered somewhat. There is a picture showing the Pontiac sitting there, and you can see back on this corner very little debris under the Pontiac at that point. The Pontiac had to be moved in this position. It couldn't possibly have started in that position, sir.

The Court: Well, can you show me on there the marks on that photo, No. 12 of Plaintiffs' Exhibit No. 4, the marks that indicate that the Pontiac, after the impact was driven back in an easterly direction?

A. No, only those scuff marks right there would indicate it, and they are very light.

The Court: Well, do you think if an automobile

(Testimony of Douglas Hardesty.)

was driven back by that force that you would only have a light——

A. You would have only light marks there.

The Court: That you would have only light marks?

A. Yes, sir, I think that it would be possible, that is, from what it shows at this particular scene. The rear of the car, in my opinion, went up slightly. There is one photo showing the rear of the car and this particular mark.

The Court: Is that the only mark on the north?

A. Yes, sir, that is the only mark.

The Court: So, the car didn't hit the north rail with very great force?

A. No, sir, only with the right rear bumper.

The Court: And not with great force?

A. Enough to put in a mark about that long.

The Court: Do you know much about—are you a physicist, do you know anything about physics?

A. I have had physics, yes, sir.

The Court: Well, what force would it take to move a car that was traveling at 45 miles per hour in a westerly direction, and weighing as much as that Pontiac weighed back east six feet?

A. I don't think it did drive it in the direction in which you are thinking. It has done this to it, sir, the force applied here has caused this effect, and then it has torn on by.

The Court: Yes, from what you have—what I am trying to find out, I am not—I am trying to find



(Testimony of Douglas Hardesty.)

out. Did you indicate that the front wheels locked at this point?

A. Well, not at that particular point, no.

The Court: Well, then, where?

A. In this area. I was judging that the angle that the Buick hit the bridge here——

The Court: Well, now, if it was in this area, could it have been north of this point that you indicate? A. No, sir, because——

The Court: Could it have been further west?

A. Yes.

The Court: How much?

A. I expect six or eight inches.

The Court: Well, in other words, this point that you indicate then is within six inches?

A. Well, I wouldn't say that it would be that close.

The Court: Well, how close?

A. In an area around a foot to 18 inches.

The Court: A foot or 18 inches farther west?

A. West, east, north, or any direction, yes, sir, because we would not be able to determine it any closer than that from the evidence that it showed.

The Court: If it was 18 inches farther north——

A. Yes, sir, then the angle to the north where this occurred would be a little different, and also the angle with which this car skidding along the bridge, the trajectory of the Buick would probably change. It is my belief that the Buick must have been traveling with greater force than the other car, and it tore on through after connecting here solid

(Testimony of Douglas Hardesty.)

enough to damage the front ends as it did, and this car spun relatively in its same position after the impact, but the other car went 80 feet beyond there.

The Court: Well, do you think then that the Pontiac car didn't travel any further after the impact?

A. No, sir, I don't think it did, it did only that (indicating).

The Court: It just spun?

A. Yes, sir, I think that is the effect on the Pontiac car.

The Court: Any further questions?

### Redirect Examination

By Mr. Doepker:

Q. This Exhibit No. 33 has been identified as the front end of the, or the bumper of the Pontiac car. Is there any evidence which you would say indicated that there was an impact on the right side of this bumper in that collision?

Mr. Alexander: Just a minute, we want to make our objection. It calls for a conclusion of this witness for which no proper foundation has been laid, just so the record is clear.

The Court: What is the question?

Mr. Doepker: If there is any indication on this exhibit here that would show an impact on this curved part here from—if we could measure and get it exact. Any indication of damage on Exhibit

(Testimony of Douglas Hardesty.)

33 for the first 22 feet to the right of the right side of that bumper towards the center.

Mr. Alexander: You didn't mean 22 feet?

Mr. Doepker: 22 inches, I beg your pardon.

The Court: Well, are you asking him to do the same thing all the rest of us can do, look at it?

Mr. Doepker: Well, we are talking about impact on the right side, and this has got to be considered, here is the bumper. If there was an impact on it, there should be some evidence of it.

The Court: Well, you had better get some evidence in as to the condition of that bumper prior to the accident if it is going to be of any assistance to us, won't you?

Mr. Doepker: Oh, I don't think we could do that. We haven't seen it before the accident.

The Court: Well, I don't know, see, how can you tell. I see rust spots and holes in it.

Mr. Doepker: And you see red paint, your Honor, too, down in here, away over here on the right-hand side.

The Court: I don't know whether it is red paint or what it is. You see these things. Were they there before the accident, any of these things?

Mr. Doepker: I don't know; I didn't see the car before the accident.

The Court: Well, I don't know how much help you can be with that, you see, if we don't know what the condition was, do you?

Mr. Doepker: Well, I assume——

The Court: In other words, are we going to look

(Testimony of Douglas Hardesty.)

at this bumper, and there is a hole in it, is that hole made by the accident or——

Mr. Doepker: I don't think anybody can tell that. Some of these are where the thing was fastened with rivets, I imagine, onto the car, but if we see markings here that are of a color different than the car that it is on, we know that there——

The Court: Well, I can see those, I can see the discolorations——

Mr. Doepker: Yes.

The Court: And whether they are paint or not, I can't tell you.

Mr. Doepker: Well, you might if you make a close examination, your Honor.

The Court: I don't know if anyone can tell you, can they, without a chemical. I don't know what the color is, I, myself, don't. I don't know. I suppose you can have someone testify that the color there is the same as the color on the red Buick.

Mr. Doepker: Do you have an opinion on that, Officer?

A. Yes, sir, I do. Apparently I haven't been putting over what I believe too clearly. I believe that red mark not to prove the point of impact or anything. I think that was acquired or put on there after the two cars had spun around, the Buick continuing on its way pulled the Pontiac with it, and that red paint got on this bumper at the time the Buick went between this portion here and here, at the time that Buick broke through there, and I be-

(Testimony of Douglas Hardesty.)

lieve that paint got on the Pontiac bumper. That is my belief.

Q. (By Mr. Doepker): Well, I believe in examination by Judge Murray, they were indicating the right front corner of the Pontiac. What I was interested in——

The Court: No; that is the impact where he said the impact occurred, not the right front side of the Pontiac, I think you misunderstood. I didn't understand, and the witness never said that it was the right side of the Pontiac that first made contact with the Buick. He didn't say that.

The Witness: No, sir.

The Court: No; he never said that. I didn't understand it that way.

Mr. Doepker: I wanted to be sure, your Honor.

The Court: No. He said that the left front wheels, the area around the left front wheels was the point of original contact on both cars.

Mr. Doepker: Well, that is what I was concerned with. I thought your Honor had the idea the impact occurred over here on the right side of the Pontiac. I wanted further to have your Honor have the benefit of a photograph which he described in which the markings appear on the north side of the bridge.

The Court: Yes; I saw that, counsel.

Q. (By Mr. Doepker): And he was talking about the part of the Pontiac that he thought made this mark up here. Will you indicate to his Honor——



(Testimony of Douglas Hardesty.)

A. This portion of the bumper, your Honor. You see, the rear portion of the bumper on the right side is shaped the exact opposite of the mark which is indented into the bridge at this point, this mark and this bumper.

Q. So if that vehicle moved upward or was forced upward in the collision, would it make a mark in the position that is indicated there on the bridge? A. Yes, sir; it would, or it could.

Mr. Doepker: I believe that is all. Do you have anything further?

Mr. Alexander: Well, we want to use the officer in our case, but we don't have anything right now.

The Court: Very well, you may step down; call the next witness.

(Witness excused.)

Mr. Doepker: We offer this in evidence, this exhibit, because it has been used in the testimony, Plaintiffs' Exhibit 34.

Mr. Alexander: Is it offered for illustrative purposes only?

Mr. Doepker: It is offered for what it is worth with the explanation that goes with it in the record.

Mr. Alexander: We have no objection to it for the purpose of illustration, but as evidence of the truth of the facts appearing thereon, we object to it.

The Court: I suppose it can be offered as evidence of the truth of the facts with reference to the measurements of the bridge itself.

Mr. Doepker: And the measurements that the

officer made from the position that the Pontiac was in.

The Court: But the other measurements on there are——

Mr. Doepker: They are all accurate.

The Court: Yes, but they merely illustrate, don't they?

Mr. Doepker: The only thing they show is the location of the scraping places and the relative position of the two cars and the distance of the front end of the Pontiac from the rail.

The Court: I will overrule the objection and admit it.

(Plaintiffs' Exhibit 34, being the sketch above referred to, is on file in the Clerk's office in this cause.)

### DOUGLAS HARDESTY

called as a witness on behalf of the defendant.

#### Direct Examination

Q. You are the same Mr. Hardesty who has heretofore testified in this case? A. Yes, sir.

Q. So you will understand the procedure, Mr. Hardesty, this is now the defense case. You stated you investigated the accident about which you have testified. I take it I would just be wasting the time of the Court to go into that matter again?

The Court: Yes.

Q. Now, Mr. Hardesty, did you, at the time you investigated the accident out at the scene of the

(Testimony of Douglas Hardesty.)

accident on August 30, 1955, determine or make any determination, from what you observed, and from your experience, or the speed of the Pontiac automobile?       A. Yes, sir.

Q. You can answer that yes or no?

A. Yes, sir.

Q. And at approximately what speed do you believe the Pontiac was traveling?

A. In the neighborhood of 35 miles per hour.

Q. Mr. Hardesty, following the investigation at the scene of the accident—strike that. At the scene of the accident, did you have an opportunity to talk with Mr. O’Keefe, the plaintiff in this case?

A. No, sir; he had left the scene when I arrived.

Q. Did you interview Mr. O’Keefe at a later date?       A. Yes, sir.

Q. When?

A. That afternoon in the hospital.

Q. And did you inquire of Mr. O’Keefe concerning the accident?       A. Yes, sir.

Q. What did he tell you?

A. He told me he was in the back seat of the Buick.

Q. Did he tell you whether he was asleep in the back seat of the Buick or awake in the back seat of the Buick?

A. He indicated that he was awake and looking.

Q. Did Mr. O’Keefe tell you whether he was lying down or sitting up?

(Testimony of Douglas Hardesty.)

A. Well, I mentioned that he had been lying down at some point along the line, but he was in a position where he could see ahead at the time, so I would assume that he would be sitting up at that point.

Q. Did you talk with Mr. O'Keefe about where he had breakfast on the morning of August 30, 1955?

A. I don't believe that I asked him where he had breakfast on the morning, no, sir.

Q. Well, did you talk with him about having made a stop at the Choo Choo Inn in Malta, Montana?

A. Now, I don't recall whether Mr. O'Keefe told me about the Choo Choo Inn or someone I was just speaking to on that date. The Choo Choo Inn was mentioned by someone. Now, Mr. O'Keefe did not definitely tell me about the Choo Choo Inn, at least, I did not make a note of it at that time, and I am a little hazy about the Choo Choo Inn business. The Choo Choo Inn came up at the time the accident occurred, that same day, that someone had seen them at the Choo Choo Inn, or that they had stopped at the Choo Choo Inn.

Q. Well, for my own information, and for the record, I discussed this matter with you a week ago today, Mr. Hardesty.

A. Saturday, and I told you that I didn't have my notes with me, but we did mention that someone or some how the Choo Choo Inn had entered into it. However, I did not write down at the time that

(Testimony of Douglas Hardesty.)

Mr. O'Keefe had said that he stopped at the Choo Choo Inn. We mentioned the Choo Choo Inn when I was talking to you on Saturday, yes, but I—if I—I don't believe I stated definitely that they had eaten breakfast at the Choo Choo Inn, but in some connection, the Choo Choo Inn had entered into it, but whether someone else had been eating breakfast at the Choo Choo Inn and saw them, but I don't recall definitely, or have no record that would show that I knew of him to be at the Choo Choo Inn. You did ask me about it when we were talking last Saturday.

Q. Did you inquire—did you inquire of Mr. O'Keefe concerning the beer bottles?

A. Yes, I did. I asked him about the beer bottles in the Buick car.

Q. And what did he tell you?

A. Well, he told me—as near as I can remember, I didn't write that down, that they were collected for some boy, and that they were going to be turned in for the value that they represented.

Q. When he returned to Windsor?

A. Well, he didn't say when they were going to be turned in, and I didn't go into it at any great length, except that I asked him why there were so many beer bottles in the Buick.

The Court: Did he tell you that his boy was collecting them?

A. He could have, although I don't remember that he did tell me that.

The Court: Did you make any examination



(Testimony of Douglas Hardesty.)

around the scene of the accident besides the measurements that you have already testified to?

A. Nothing that wouldn't be preserved in the photographs, sir. You mean as regarding bottles on the road or the highway?

The Court: Yes.

A. I looked around and I saw bottles in the car.

The Court: But not outside of the car?

A. A few of them may have spilled out in the barrow pit, I don't know. There were a good number of beer bottles in the back of the car between the seat and the front seat on the floor of the car.

The Court: There would just be the bottles that would have spilled out of the car as a result of the doors opening and that sort of thing? Were there bottles thrown around some distance from the car?

A. Not that I noticed, no.

The Court: You looked around, did you?

A. Well, I don't recall any bottles, no, sir. I ordinarily look for them.

Q. (By Mr. Angland): Directing your attention to Photograph No. 2 of Plaintiffs' Exhibit No. 4, Mr. Hardesty, I note a box over near the Buick automobile. Do you know what that is?

A. Well, as I recall, that was a box with beer bottles in it.

Q. You don't know whether or not it came from the Buick automobile?

A. Well, I couldn't positively state that it came from the Buick automobile, but I believe that that

(Testimony of Douglas Hardesty.)

whole—I believe it was part of the stuff that was loaded in the Buick and had been set over there by someone. I talked to Gene Seel, the wrecker man, about that box of bottles setting over there. I didn't see it placed over there.

Q. You didn't?

A. No; I did not see it placed over there.

Q. There was a box?

A. Yes; there was a box; a beer bottle box or case.

Q. What about the trunk of the automobile?

A. Well, I saw it opened once, I believe, at the garage, and there appeared to be a case of beer or beer bottles in the trunk.

Q. You don't know whether it was beer or beer bottles?

A. Well, I recall that it was a case that had a name "Black" something or other on it, the name "Black" appeared on the stuff, it was either ale or beer, and it looked to me to be a full case. It could just as well have been a case of empties and closed again.

Q. Now, Mr. Hardesty, in the course of your duties, did you investigate, make any investigation concerning the death of Mrs. O'Keefe?

A. Concerning her death?

Q. Well, did you go down to the undertakers in the course of your duties?

A. Yes, sir; I did.

Q. And did you make a request of the undertaker?

A. Yes, sir.

(Testimony of Douglas Hardesty.)

Q. What was the nature of that request?

A. I requested a sample of her blood in order that we might get an alcoholic test of it for statistical purposes, and we had been requested to do that; all Highway Patrolmen, in any fatality, had been requested to obtain a blood sample of the drivers, if possible.

Q. Was the blood sample taken in your presence?

A. I was in the room in the morgue standing at the head of the table when the mortician took the blood sample, yes, sir.

Q. And did you, in the course of your duties, have that blood sample sent in for analysis?

A. Yes, sir.

Q. Did you receive a report from that analysis?

A. Yes, sir.

Q. Do you have that report with you?

A. Yes, sir.

Mr. Doepker: It is an unusual situation, of course, your Honor. I don't know whether a person has a right to take a sample from a person who is deceased or not. I presume that it is a matter which, if a proper foundation is laid——

The Court: They couldn't have taken the sample from her if she were alive, could they?

Mr. Doepker: No.

The Court: That would be a violation of the Constitution, a constitutional right.

Mr. Doepker: They couldn't without her consent.

(Testimony of Douglas Hardesty.)

Mr. Alexander: Not unless she consented.

The Court: Well, if she is in a position where she can't consent, where she is dead, certainly we have respect for the dead, too, as well as the living——

Mr. Doepker: Well, your Honor, I believe I'll just forget that objection, let him tell whether she was intoxicated or not.

The Court: Very well.

Mr. Doepker: He can tell whether she was intoxicated or not according to the blood sample.

The Court: Very well, you may answer the question.

Mr. Angland: I think the question was, "Do you have the report."

A. Yes; I have the report.

Mr. Angland: Well, I won't introduce the exhibit if he is going to let the witness testify concerning it.

The Court: That's fine. Is this witness in a position to know?

Mr. Angland: From the report. He has the report. You have the report with you?

A. Yes, sir, I have the report.

Q. (By Mr. Angland): Would you state the result of the examination as shown from that report?

A. In per cent of blood alcohol?

Q. Yes.

A. The report indicated that the blood test had .05 per cent blood alcohol.

(Testimony of Douglas Hardesty.)

Cross-Examination

Q. Is that, according to your experience as a Highway Patrolman, an indication that a person is under the influence of liquor?

A. Well, no, not to the extent of being under the influence to the degree that prosecution would result from that blood alcohol content level, or blood level content.

Q. Then, Officer, did you observe where the instrument came from that made—that the—was it the Coroner?

A. William Bell, the Coroner.

Q. Did you observe where he got the instrument he took the sample from?

A. The blood was obtained, I believe, from——

The Court: Not where the blood was obtained, but where did the instrument come from that was used in obtaining the blood?

A. He didn't use any instrument, sir, he used only the container; he pressed it up against the head and neck of the deceased and extracted a certain degree of fluid and blood.

Q. Did he make an incision with some instrument?

A. No, sir; he didn't; the incision was there, there was already bleeding from the neck portion right by the ear where he obtained the blood sample.

Q. All right, and where did he obtain the container? A. I gave him the container.



(Testimony of Douglas Hardesty.)

Q. You handed him the container yourself?

A. Yes.

Q. Was the container—had you had the container preserved in alcohol?

A. No, sir; I use the standard blood sample container which we are furnished.

Q. And that, was that the sample that he used to take blood from some wound on the person, is that it?      A. Yes, sir.

Q. Do you have a chart which relates the blood alcoholic content where, for instance, one drink, two drinks, three drinks and so on, to the tests that are made with one drink, two drinks, and so on, do they have a relative blood percentage shown?

A. No, sir, I don't, because that would vary with the weight of the individual, and a larger person could drink the same amount of alcohol in reference to a smaller person, and the large person might not show the same level the smaller person would show.

Q. Then it isn't standard?      A. No.

Q. I thought this .05 was shown in the Highway Manual as a person having one drink?

A. Well, on the average individual, that might be the representative value.

Q. And that would be one drink of beer or one ounce of whiskey, isn't that the way they put that?

A. Well, no; I don't believe so, because I have seen several examinations conducted in which measured amounts of alcohol were given, and it doesn't work out that way.

Q. It doesn't work out that way?

(Testimony of Douglas Hardesty.)

A. No. Other factors enter into it, such as the content of the stomach, if any, whether or not the test was made immediately after the alcohol was consumed, or whether it was made a half hour, 45 minutes, or hour later, so all those factors will enter into what the blood alcohol level will show.

Q. But at any rate, the test showed .05?

A. .05.

Q. .05, and at no time does the Highway Patrol arrest for being under the influence of liquor with that result, do they?

A. No, sir; they don't; no, sir.

Mr. Doepker: I think that is all.

The Court: Well, that is not a degree of intoxication at all, is it?

A. Yes, sir; it would be measured as the degree of intoxication, but you are not——

The Court: Well, do you mean if you have any alcohol in your blood at all, you are intoxicated?

A. No, sir. After the level reaches .15, which would be three times that much, you would be considered legally intoxicated by standards set up by——

The Court: You wouldn't legally be considered so in this Court.

A. Well, let's put it this way: The National Safety Council has set up as a standard that intoxication is present, that you are not considered under the influence of intoxicating liquor if your blood alcohol is .15. There you have reached a point where——

(Testimony of Douglas Hardesty.)

The Court: That is what I say, but .05 is no point of intoxication?

A. No; not a point of intoxication because it is not considered the intoxicated level.

The Court: It is no evidence of intoxication at all then?

A. Correct. I did not mean to be misleading. Blood level is an indication of a degree of intoxication, but up until a certain level is reached, you could not be considered intoxicated.

The Court: Very well.

### Redirect Examination

By Mr. Angland:

Q. Mr. Hardesty, the .05 does indicate intoxicating beverages have been consumed?

A. Well, I would say that it indicated that something containing alcohol had been consumed.

Q. Yes.           A. Yes, sir.

Q. And the effect on people varies from person to person, doesn't it?

A. Yes; I would say that the effect of alcohol varies from person to person.

Q. If a person wasn't used to drinking, and you said size affected them, in a small person it is possible that might affect their co-ordination?

A. This, of course, this test shows what blood level alcohol, so that size of the person has nothing to do with it after you determine his blood level content, no, I would say that .05 would not be——

(Testimony of Douglas Hardesty.)

Q. It wouldn't affect——

The Court: Even you and I can have that much, Emmett.

A. Well, in no case that I know of has that been considered a point where you are affected.

ALEXANDER JOHN FUZESY

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Marra:

Q. Will you state your name, please?

A. Alexander John Fuzesy.

Q. And where do you live?

A. Harlem, Montana. .

Q. What is your profession?

A. I am a registered nurse.

Q. How long have you been a member of this profession?

A. I have been registered since 1951.

Q. Where did you receive your training?

A. At the Columbus School of Nursing in Great Falls.

Q. What is your present occupation?

A. We are running a rest home in Harlem.

Q. And what did you do before that?

A. I was administrator of the hospital in Malta, Montana.

Q. While you were the administrator of the hos-

(Testimony of Alexander John Fuzesy. )

pital in Malta, Montana, did you have occasion to see Walter Schoepski in your hospital as a patient?

A. Yes, I did.

Q. About when did he arrive at your hospital?

A. Oh, it was in August, the end of August, somewheres around [486] there, or the first of September, in between that period. I don't remember the exact date.

Q. Do you remember when he arrived at your hospital?        A. Yes, I do.

Q. Did anyone else arrive at or about the same time?

A. Yes, there were his wife, another man and two little children. [487]

Q. Now, at the time Mr. Schoepski and Mr. O'Keefe and the children arrived at the hospital, did they have any luggage?

A. Well, not at that time, they didn't, I mean they just [488] carried them in, the people that brought them in. Their luggage was brought in later.

Mr. Doepker: I didn't hear you.

A. The luggage was brought in later. They were laid out—the kids were sitting in the front, I think, in the front of the truck, and the rest of them were in a station wagon and a truck, a laundry truck, I guess it was.

Q. Calling your attention particularly to the O'Keefe luggage, what did you observe about the O'Keefe luggage?

A. Well, most of it was brought in all loose,



(Testimony of Alexander John Fuzesy. )

clothes and groceries and some pots and pans and all kinds of stuff, and some beer. It looked like they were camping.

Q. You mentioned some beer, how much beer?

A. Well, there was some loose, I think about three or four cartons, I really couldn't say offhand. It was all put in this one room, and it was all just dumped there, and I didn't have a chance to really take a look at it.

Q. Was it in bottles?           A. Yes.

Q. Not empty?           A. No.

Q. They were full? How do you know they were full?

A. Because some of the girls were wondering why they had that much, you know, and I would have thrown them away when I shipped their stuff to them. [489]

Q. When you shipped their stuff to them, did you ship the beer to them, too?

A. Everything that was there, I put it in this one big box and sent it C.O.D. back to Canada. [490]

Q. You have mentioned something about a station wagon earlier?           A. Yes.

Q. Do you remember any other vehicles that brought the injured in?

A. There were three or four of them. I know there was the station wagon, and this laundry truck, they were parked right [493] in the entrance, and there were some parked in front, you know, by the side of the hospital.

Q. Do you remember speaking to either any oc-

(Testimony of Alexander John Fuzesy. )

cupant of the station wagon or the laundry truck?

A. Well, I spoke to all of them. This one in the station wagon that was traveling with her husband was a registered nurse, and she helped considerable, she was a real big help. At the time, we had five patients come in all at once, we were kind of short, and then there was another girl, there was another girl and another nurse in another car, and the girl driving the laundry truck, she had the kids in the front with her, and she helped undress the kids and put the kids in bed.

Q. Do you remember anyone else?

A. There was a man there who helped, you know, helped us carry them in.

Q. Could you describe him at all?

A. No; I really don't remember.

Q. Anything about the condition of his clothes or otherwise?

A. Well, I know he was quite dirty and bloody. I told him to go wash himself, but I don't remember who he was.

Q. Well, was he a young man or an old man?

A. Well, he wasn't old, he was just a young man. He helped us carry all these people in and put them to bed.

Mr. Marra: That is all. [494]

## WALTER SCHOEPSKI

the defendant, called as a witness on his own behalf.

## Direct Examination

My name is Walter Schoepski. I'm the defendant and cross-complainant in these cases, and I live in Beloit, Wisconsin. I am 60 years old now. I was 59 at the time of the accident that gives rise to these cases. I started driving an automobile in 1927. I do not have an automobile now. I have not had one since the accident. I have always driven an automobile from 1927 up till August, 1955. I am married and my wife is sitting in the courtroom. We have a family, two, a boy and a girl; the girl is 26 and the boy is 25.

I left Beloit, Wisconsin, in August, 1955, on a vacation or something of that kind. We left Beloit, Wisconsin, on the 27th of August, 1955, and on the evening of August the 29th, 1955, we were in Williston, North Dakota. We arrived in Williston, North Dakota, I would say 5:30 or 6:00 o'clock, maybe, and we left Williston, North Dakota the following morning real early because it was dark when we left. We had the lights on the car when we left. I don't know exactly the time we left, but I estimate it to be around 5:30 o'clock and that would be Central Standard Time, and after we left Williston, North Dakota, we started west on Highway No. 2. We had no intoxicating liquors to drink before we left Williston that day, and we had none on the evening of August the 29th. We followed Highway

(Testimony of Walter Schoepski.)

No. 2 all the way, at approximately around 55 miles per hour except when we came through a town.

There is a narrow bridge sign at a point east of the bridge, and I recall that sign and at the time that I came to the sign, well, I took my foot off the gas and pressed on the brake a little bit to slow up. I took my foot off the gas and eased on the brake to slow down. I saw an automobile coming from the west towards me, and I continued on after passing that sign. Just where the automobile was that was coming from the west, I have a fair idea. Well, I would say it was about to enter the bridge at the same time that I did, to the best of my knowledge. Well, I knew it was a narrow bridge and I was trying to hug the rail and stay on my own side of the highway because I knew I was on a narrow bridge, on the right side of the highway. I stayed on the right side of the highway. I continued to hug the rail of the bridge which has been identified as the north rail of the bridge. My car didn't sway, my car didn't jump like a frog. The mechanical condition of my car was O.K. because I had the car checked over before we left on our vacation. I had it gone over. My eyesight was good, in fact the kind of work that I was doing before I left Beloit, Wisconsin, I worked in a machine shop, and I worked on a machine for the Gardner Machine Company. I was working on a boring bar. My work, quite a bit of it, is big work, boring holes, large type holes, all different sizes, a matter of fact, and it is a long bar that goes through the piece, whatever you are

(Testimony of Walter Schoepski.)

boring, you put a tube in there and that goes around that part of the hole, and we have to measure them holes while the bar is in there with the caliper, and we would have to hold them to a thousandth of an inch or less, in fact, the tolerance on the drawing calls for a half a thousand. It is supposed to be held to within half a thousandth of an inch so that my eyes are in good shape.

I don't recall exactly what happened at the time of the collision or the impact. I would say I was driving around 40 miles, maybe a little bit less, but I am sure I wasn't driving much over 40. I recall entering the bridge, and I recall hugging the north railing, and the next thing I recall is after the accident. The first thing I recall, I opened my eyes and the windshield was shattered, and when I saw the withshield was shattered, I passed right out again, and just opened my eyes and seen it, then I went right back out again. I don't remember anything. The next thing I heard, someone say he had a broken leg, and that is all I can remember right then, too. I don't know where I was, if I was in my automobile or out of it when I recall that. I think I was in the automobile yet then, but I don't know. I don't recall being moved out of the automobile. I don't recall anything else that was said at the scene of the accident, but I think I was lying down there and someone mentioned about the ambulance or it ought to be time for the ambulance to be there, or the length of this time it was taking. I don't know just what it was. I can't say for sure, but I



(Testimony of Walter Schoepski.)

heard someone say, "Here it comes," and the next thing I heard was, "They will be back in a minute, they have to turn around," but that is very vague; I just can barely remember that. I can't remember being loaded into the ambulance, and I can't recall the trip from the scene of the accident to the hospital in Malta. The first thing I recall at Malta Hospital, I think I was being moved, and some one asked me what my religion was. I don't know whether I was being taken out of the ambulance at that time or not, but it seems as though I was being moved. No, when I became conscious, it would just be a flash and that is all, and then I blacked out again, and I don't recall being in the room at the hospital; I don't remember anyone else that was in the hospital room with me when I was first taken in there; I don't know whether there was anyone in there or not. I will tell the Court the first thing that I recall, the first day in the hospital. Well, I think it was, I don't know just for sure, but I think this was the first day; Dr. Wiprud asked me where I hurt. I was sleeping and he had to wake me up, and I think I tried to tell him, but I couldn't talk, and I pointed up to my right side where I had broken ribs, no, I mean my left side, pardon me, and those ribs hurt very much while I was conscious, very bad, and if I talked, they hurt bad. My breathing hurt, too; I was unconscious, or I don't remember anything right about that time, the first day.

(Testimony of Walter Schoepski.)

Q. What about the second day in the hospital, Mr. Schoepski?

A. Well, the second day, I think it was in the morning, Mr. Fuzesy, he come in the room and he said my wife wanted to know whether he should notify our daughter about the accident. Of course, he had to wake me up, I was asleep, and I said, "Yes," and that is all I can remember at that time. I must have gone back to sleep because I don't remember anything else, but I told him to go ahead and notify our daughter.

Q. Did you later hear anything further about that?

A. It was that evening my daughter called long distance, and I was taken in—I was asleep then, and they woke me up and they connected a phone at the bed and I talked with her for a short while. She wanted to know how I was or what was the matter, and I told her I had a broken leg and that I hadn't seen her mother yet and I didn't know what was the matter with her, and I think I tried to say something else, but I don't know what other things I said. It was too hard to talk, it was painful to talk at that time.

Q. Now, do you remember whether or not anyone else was in a bed in your room at that time?

A. No.

Q. You don't know. Were you in an oxygen tent at that time, if you know?

A. I think I was because when they was connecting up that phone, it seems to me they had a

(Testimony of Walter Schoepski.)

quite a time with something [512] there, and I think that was the oxygen tent, that covering or whatever it was. [513]

(Here follows a description of the injuries sustained by Mr. Schoepski and the pain and suffering which he endured over the period of time that he was in the hospital.)

(The loss of wages which he sustained by reason of the injuries, his hospital bills, his cost of physicians' services and his present disability which is omitted from this record for the reason that the appellant is making no point about the extent of the damages sustained by Mr. Schoepski on this appeal. The damages sustained by Mr. Schoepski as far as this appeal is concerned is entirely irrelevant to the points which are being heard, urged by the appellant on this appeal.)

### Cross-Examination

We left Williston before it was daylight. We had no set place we were going to stay that night, but we were directing our trip towards a vacation place. We were going to Glacier, we were going to Glacier Park. We did not have any reservations ahead or anything of that sort that we were trying to make. I had driven all the day before. We left Aberdeen the day before and we got to Williston that night, it was practically all day that I had been driving. I drove all day the day before Willis-

(Testimony of Walter Schoepski.)

ton, and I got to bed early in Williston; I would say about 8:30 o'clock in the evening, 8:30 or 9:00 o'clock. It was after dark when we went to bed. It would be Central Standard Time. I got up early in the morning and had breakfast; I did not make any stop between Williston and the scene of the accident, so I drove continuously then from that time until about 9:30 in the morning, and made no stops, and I had driven by myself the entire distance. We had a good night's sleep and I was not tired.

I never got out to the scene of the accident again; I haven't been out there at all.

As I came along there, I observed the narrow bridge sign ahead, and right before I came to that sign, I was sort down a little knoll; I couldn't see the bridge from the place where we first saw that sign. I don't remember seeing the bridge.

In driving and coming up over that knoll to the east where the sign is, you see the bridge, kind of down below you, and I did see the bridge a little bit below the level of when I was driving, and the bridge appears to be narrow compared with the road. I was only over this road the one time. I do not recall that the car, as you came over the top of that knoll, I don't recall that the car pulled you towards the left as you came down that last drive to the bridge. I would say that the car did not pull me towards the left, and as I was sitting there driving, I was on the left side of the car, and I did not try to make towards the center of the bridge



(Testimony of Walter Schoepski.)

to avoid the north rail; I tried to stay as close as I could to the north rail; that is what I was watching. I wouldn't say that I wanted to miss the north rail, too, or that I had to turn a little bit to start with to miss the north rail on the highway, and I don't think my car pulled me towards the center approaching the bridge I am talking about.

As I came over where that sign said "Narrow Bridges Ahead" and I came up there down that slight grade, I did see the Buick ahead, and I came up there on that slight grade, I did see the Buick approaching, and at that time I didn't see anything about the Buick, that is, I didn't see anything about it that caused me to be concerned at that time, and as far as I can remember, I didn't see that Buick off of its lane at any time, but I am sure that I stayed in my own lane. I don't remember anything right before and right after the accident.

My judgment and memory is that I was coming onto the Bridge on one side, the Buick was coming onto the bridge on the other side.

MRS. WALTER SCHOEPSKI

Witness called on behalf of the defendant.

My name is Mrs. Walter Schoepski. I am the wife of Walter Schoepski, the cross-complainant in this case. Mr. Schoepski and I have been married a little over 27 years, and we reside in Beloit, Wisconsin. I recall leaving Beloit, Wisconsin, back in August, 1955. We left very early in the morning, around



(Testimony of Mrs. Walter Schoepski.)

three in the morning. That was a Saturday. I wouldn't remember the exact date, but it was a Saturday prior to the accident, and we stayed on the evening of August the 29th, 1955, in Williston, North Dakota. We arrived in Williston the day before around 5:30. We always drove until my husband got tired or we found a motel that we wanted to stop in. We had no special time we stopped; just drove until we felt like it. We retired very early that evening at Williston, I would say 8:30 because I had broken a toe before I left home and I was hardly able to walk, so we didn't explore the town. I don't know when we got up in the morning, but it was dark; we had gone to bed early and decided when we woke up and were both awake, we would start. It was dark in the room. I got up and lifted the venetian blind and I just could see a streak of day, it wasn't daylight, and as long as we were awake, we decided to start driving; we like to drive early. We had breakfast in Williston. It was dark enough when we left Williston to have the lights on our car, but I don't know exactly what time it was.

As to my recalling the trip from Williston, North Dakota, to the scene of the accident, I don't remember anything about it. I don't remember the type of country it was in, whether it was flat or rolling, I don't remember a thing. I have tried very hard to remember; I thought maybe by seeing some of these pictures of the scene of the accident and hearing these people talk, that maybe it would bring

(Testimony of Mrs. Walter Schoepski.)

it back to me, but it hasn't brought a bit of it back; it is just gone, that is all. I remember leaving Williston, and I remember having the lights, getting in the car, and having the lights on, but that is the last I remember; and the next thing that I recall, I remember someone telling me that they were a registered nurse and "We will take care of you." I have found out since who it was. I have heard from this lady that was the registered nurse. She is from Oak Harbor, Washington. She was a tourist. She and her husband and two children were going east. I didn't know at the time who she was, it was just a voice, that's all. There wasn't even a person connected with it, as far as my memory serves me, and I don't know where I was at that time; I had no sensation of being whatsoever. I don't recall being taken into the Malta Hospital, or who took me in. Well, afterwards, I recall being in the Malta Hospital, but I don't remember being taken into the hospital or anything about my entrance to it. The first thing I can really remember distinctly is being very, very nauseated and vomiting very hard because it was very painful. I presume that was in the afternoon. A doctor was there and I remember him saying that "you've got to get the blood out of your stomach." I was told that I suffered a concussion. I was injured in this accident, too.

(Here Mrs. Schoepski relates her injuries and her observation of the injuries of her husband and it omitted from this record for the

(Testimony of Mrs. Walter Schoepski.)

reason that there is no point on the appellant's part in this appeal in reference to the damages sustained by Mr. or Mrs. Schoepski.)

### Cross-Examination

I left the hospital on September the 10th and went back home.

(Deposition of Raymond O'Keefe.)

Mr. Alexander: At this time, your Honor, the defendant desires to offer in evidence the deposition of the witness Raymond O'Keefe taken before R. L. Robertson, a Notary Public for the State of Montana, residing at Great Falls, which deposition was taken on the 12th of August, 1956, being the portion of that deposition commencing with the question on line 6 of page 44 and continuing with all of the questions and answers down through—how much do you want?

Mr. Angland: I want to put in the part that you read to.

Mr. Doepker: You want it to start where?

Mr. Alexander: Starting with line 6, page 44.

Mr. Doepker: How far are you offering it?

Mr. Alexander: Our evidence. We are going to do it that way. Down through line 25 on page 44, which, as I recall, are the only questions and answers covered on the stand. I may be [569] mistaken.

Mr. Alexander: Well, I am offering the deposition to show——

The Court: Well, I will admit it. I think that covers, the offer covers that portion that shows what his answer was to the second question where he says, "Not for me, but for him."

Mr. Doepker: Yes, sir.

The Court: Very well, I'll admit it. [571]

#### DEPOSITION OF RAYMOND O'KEEFE

Q. Now, what kind of bottles were those?

A. Beer bottles.

Q. And about how many were there?

A. I don't know. I didn't know they were in there until that morning.

Q. Have you any idea how they got there?

A. Yes.

Q. How did they get there?

A. Well, I have a little lad at home that picks them up and when he was around these motels he thought he was getting something given to him and he was hiding them in the car and he was thinking he was going to sell them, and I got in the back that morning and I found the bottles when I got in to lay down and to move the blankets over and sleep, and I removed the blankets and he had them covered up.

Q. Well, now, when did you move the blankets to lie down and sleep?

A. For him to lie down and sleep. It was for him to lie down and sleep. [44]

DR. DUNCAN S. MacKENZIE, JR.,  
called as a witness on behalf of defendant, being  
first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. State your name, please? [573]

A. Duncan S. MacKenzie, Jr.

Q. Where do you live?

A. In Havre, Montana.

Q. And what business or profession are you engaged in?      A. Physician and surgeon.

Q. Licensed to practice in the State of Montana?      A. Yes.

Q. And practicing your profession in Havre, Montana?      A. Yes.

Q. What has your education been leading up to your practice of medicine, Doctor?

A. I received my M.D. Degree at the University of Minnesota in 1936. I had a year of internship, a year of residency, practiced two years and eight months, five years in the army, and ten and a half years practice since the army.

Q. And has that been a general practice?

A. General, yes. [574]

Q. Dr. MacKenzie, this does not have to do with the examination of Mr. Schoepski, but I wanted to ask you another question. Is it possible, or is there a medical explanation for a person who has been in a serious automobile accident, who has been un-



(Testimony of Dr. Duncan S. McKenzie.)

conscious for several hours, who has suffered a concussion, to forget events immediately before a particular incident that caused the concussion and the unconsciousness; is there a medical explanation for that condition?

A. I don't feel that I am qualified to try to explain it other than I am convinced in my own mind that it does happen at times.

Q. What do you call it?                      A. Amnesia.

Q. Retrograde amnesia?

A. Retrograde amnesia, yes. [578]

(Witness excused.)

The Court: Any more witnesses?

Mr. Alexander: The defendant and counter-claimant rests, except for the testimony of the witness Mabel Keough.

The Court: Very well, any rebuttal.

Mr. Doepker: Yes, your Honor. [579]

## MRS. MABEL KEOUGH

called as a witness on behalf of the defendant.

My name is Mrs. Mabel Keough. I reside at the present time in Great Falls. I have resided in Great Falls since a year ago in August. I formerly resided in Glasgow in August, 1955, and I was employed in Glasgow in August, 1955; I worked in the Delux Cleaners in Glasgow. Worked in the Delux Cleaners approximately about 3 years. During August, 1955, the nature of my work was that I was the delivery girl in Glasgow and that I had a route going from Glasgow to Malta, and on that route, I made the trip from Glasgow twice a week. I had drove over that route about three times. I had just started it. We had just started the route in August, 1955. There was a vehicle that I used in the delivery route from Glasgow to Malta. I drove a panel wagon. It was a GMC. It was orchid on the bottom and white on top, trimmed in black. It had one seat, the driver's seat. Well, there was windows on both sides of it and there was a tall window in the door in the back where I put the laundry. Well, by my driver's seat and my right-hand side on the other door, there were windows and behind that window to the rear of the panel, it was plain, that is where we had our writing on it, there was no windows there, it was solid.

I came upon an accident at a bridge some 12 miles east of Malta August the 30th, 1955. Yes, I did, and when I came on that accident, I was on one of my regular routes to Malta. I left Glasgow that morning, I figured it was about 7:30, and I

(Testimony of Mrs. Mabel Keough.)

stopped at Hinsdale and picked up laundry and then I started off for Malta, from Hinsdale to Malta. I don't have any idea when I left Hinsdale. I just stopped in a cafe and they had the laundry ready and I picked it up and I left again, and that was about 29 miles from Glasgow. I do not know how far it was from Hinsdale to the place where I saw the accident. I was proceeding west on Highway U.S. No. 2. My speed from Hinsdale to the place of the accident was 40 to 45 miles per hour.

Q. When did you see any vehicle ahead of you proceeding westerly on U.S. Highway 2 that morning in the vicinity of the bridge?

A. The only car I can remember is when I came over the knoll, the hill behind the bridge there, I saw a light colored car.

Q. And was that light colored car eventually involved in some unusual event?           A. Yes.

Q. When you came over the knoll of the hill?

A. Yes.

Q. And at that time, did you see any other vehicle coming from the east and proceeding—or coming, rather, from the west and proceeding east?

A. Well, in my mind I figured I did, I don't know if it is the truth or not. I figured I had seen the Buick, but I can't tell whether it was the truth or not. It is a muddle in my mind, I would say.

Q. Now, this light colored car that was ahead of you, on which side of the road was it [591] proceeding?

(Testimony of Mrs. Mabel Keough.)

A. It was on the right side of the road, my own side.

Q. Can you tell the Court about how fast it was going?      A. No.

Q. What did you do when you came over the brow of the hill?

A. There was a station wagon that came up behind me, and he honked his horn and was going to pass me, and I saw this light colored car in front of me, and I put on my brakes.

The Court: You what?

A. I put on my brakes and slowed down, and that is when the accident happened.

Q. Now, this knoll that you speak of, is there anything there that will identify the knoll that you refer to?

A. It has a sign there that says, "Narrow Bridges," and it has so many miles ahead. I don't know how many miles it was.

Q. When this car honked and went to pass you, where were you when you started to slow down, with reference, let us say, to the bridge, or the knoll or the signs?

A. Well, it was on top of the hill, it was going downward on the knoll.

Q. Am I correct that you had just started down when you started to stop?      A. Yes.

Q. Did you come to a complete stop?

A. I did.

Q. And when you came to a complete stop,

(Testimony of Mrs. Mabel Keough.)

where was this [592] light colored car ahead of you?

A. I believe it was approaching the bridge. I don't know if it was on the bridge or approaching it, I cannot remember.

Q. And what can you tell the Court as to where it was with reference to the right or left hand side of the road?

A. Well, it was on the right side of the road.

Q. Did something happen shortly thereafter?

A. Yes, it did.

Q. Will you just tell the Court what happened?

A. Well, the only thing that I can remember that is clear in my mind is I saw the Buick sway and kind of hit the bridge, and then it just swove out and hit into the barrow pit on the north side.

Q. On which side?

A. On the north side of the road.

Q. At that time that the Buick swerved and came across to the north side of the bridge, was the Pontiac on the bridge?      A. Yes.

Q. And where was the Pontiac at that time with reference to its side of the road?

A. It was on its own side.

Q. On its own side of the road. Can you tell the Court anything about the speed of what you have described as the Buick automobile as it swerved across the road into the barrow pit to the [593] north?      A. No, I couldn't.

Q. Well, can you tell the Court about the for-



(Testimony of Mrs. Mabel Keough.)

ward progress, or the speed of the Pontiac at that time?

A. Well, when they hit, or however they did hit, the Pontiac just stopped. It didn't proceed, I mean it just stopped.

Q. It just stopped? A. Yes.

Q. That would be—what direction would that be the Pontiac had been proceeding?

A. Going west.

Q. And it ceased going west? A. Yes.

Q. And at this time, I take it, you were at a stop? A. Yes, I was.

Q. On the knoll? A. Yes.

Q. And were you higher or lower than the bridge where the collision occurred?

A. I would be higher than the bridge.

Q. Can you—of course, the Court is pretty well familiar with this scene, but can you give him an idea of your visibility ahead, or your ability to see?

A. Well, you couldn't see the bridge until you got on top of the knoll, I mean, you wouldn't have known it was there.

Q. But then when you do get to the knoll and at the place [594] where you were stopped—

A. You can see the bridge.

Q. Were you looking up or down at the bridge from your stopped position?

A. You mean if I could see the bridge?

Q. Well, I am speaking now of the time when you had come to a stop and had passed over the knoll, as I understand it. A. Yes.

(Testimony of Mrs. Mabel Keough.)

The Court: Was the bridge down hill, or on the level with you, or up hill?

A. No, it would be going down hill.

Q. When the collision occurred and the Buick swerved into the barrow pit, what did you do then with respect to the vehicle you were driving?

A. Well, after the Buick had went down into the barrow pit, I drove up to where the Buick was, and I got out.

Q. Now, when the Buick went into the barrow pit, were there any unusual sounds that you heard?

A. Just the thud.

Q. Was there anything in the way of dust or dirt?

A. Yes, there was.

Q. Well, tell the Court what there was?

A. Well, when it hit the barrow pit, I mean there was dirt and dust flew up.

Q. Well, I believe you told me then you drove up and stopped? [595]

A. Yes.

Q. What did you do then that you recall?

A. I got out of the panel wagon, and I went around in front, and a man brought two small children up to me.

Q. Did you at any time go down into the barrow pit?

A. No, I didn't.

Q. And what did you do with respect to the two small children?

A. I got some dirty laundry out of my panel wagon—they were sheets—and I laid them down on the ground and I rolled them up so they would have

(Testimony of Mrs. Mabel Keough.)

padding for their heads, and I laid them in front of my panel wagon.

Q. Did you observe the people in the light colored car?      A. No, I didn't.

Q. Well, were there some injured people that you know of?

A. Well, I heard later there was, I mean I didn't go up to the car at all.

Q. You didn't go up to the light colored car?

A. No.

Q. Did you ever find out what make the light colored car was while you were there?

A. Yes, I found out later it was a Pontiac.

Q. I take it then you didn't see the people in that Pontiac removed?      A. No, I didn't.

Q. Or do you know where they were taken, if they were [596] removed? Did you see them along the highway there or on the bridge?

A. No, I didn't.

Q. How about the man that came up from the Buick, could you describe him?

A. He was a tall man, I wouldn't know how tall he was, and he was slender.

Q. And did he—was there anything about him to indicate he had been in an accident?

A. Yes, he was bleeding from the forehead.

Q. Did you observe what that man did with respect to anything that was in the car at any time?

A. Well, he threw bottles.

Q. And what sort of bottles were those?

(Testimony of Mrs. Mabel Keough.)

A. Well, I thought they were beer bottles.

Q. And could you tell me where he threw them?

A. He went up in front of the car, and he threw them kind of up on the slope of the hill.

Q. Is there a fence anywhere along there?

A. I believe there is someplace in there.

Q. I was wondering whether these bottles might have been thrown somewhere with respect to the fence?

A. Well, I don't have that clear in my mind, I mean I can't remember. I know he threw them up towards, by the fence, or some place, I remember a fence, but I can't—— [597]

Q. Right after the collision when the Buick had come to a rest in the barrow pit with this dust, were there other men there that you saw?

A. Yes.

Q. How many?

A. I couldn't say, there was quite a few men there. Oh, it was a little while, but there was a lot of people around.

Q. Well, I was directing this particular question to the time immediately after the collision had occurred.

A. There was a man that got of a station wagon that was pulled opposite me, that would be on the south side of the road. He was pulled opposite me.

Q. And was there any other men there immediately?      A. No.

Q. Could you describe this other man to me as to age?      A. No, I couldn't.

(Testimony of Mrs. Mabel Keough.)

Q. Was he tall?

A. I remember he was short and stout. I couldn't estimate his age or anything.

Q. How about his hair, do you know if he had a hat on?      A. I believe he had a hat.

Q. How long, do you know, or would you say you remained there at the scene of the accident?

A. Oh, I couldn't say, it was quite some time, but I couldn't estimate it. [598]

Q. While you were there, did any officers come, highway patrolmen, sheriffs?

A. No, I didn't see any, or they didn't talk to me.

Q. Did you—when you left the place of the accident, do you know whether persons had been taken to the hospital before you left?

A. No, I didn't.

Q. You didn't see them leave?      A. No.

Q. What was your attention directed to during the time immediately after the accident?

A. It was to the two small children, I never left them.

Q. And am I correct that that is about all you gave attention to?      A. Yes.

Q. Where were the children eventually taken?

A. They were taken to the hospital in Malta.

Q. And who took them?      A. I did.

Q. In your——      A. Panel wagon.

Q. While you were there, do you recall the ambulance having come?

A. Well, the little nurse that rode in with me,



(Testimony of Mrs. Mabel Keough.)

she came and asked me if I would come and help her clean the blood off [599] the man that was in the Buick.

Q. And at what place was that?

A. That was in the hospital.

Q. In Malta? A. In Malta.

Q. I am referring now to the scene of the accident, whether you recall the ambulance being out there while you were there?

A. Yes, he come over and said that somebody had said that there was a woman over there that needed attention, and there was a man spoke up and said, "You don't need to bother about her, she is dead," but I don't know who he took in with him.

Q. The man who said that, was he a man that you had seen there before?

A. Yes, he was the short man with a hat on.

Q. Was that the same man that——

A. It was the same man that I thought was driving the station wagon?

Q. Do you know how many station wagons there might have been there at the east end of the bridge?

A. No, that is the only one I saw was the one that was parked opposite me.

Q. When you were requested to take the children into Malta, your panel was still on the east end of the bridge? A. Yes.

Q. How did you then proceed across the bridge, if you will tell [600] the Court that.

A. There was a man standing by the Pontiac

(Testimony of Mrs. Mabel Keough.)

and one standing on the south side of the bridge there, and they directed me through.

Q. And you drove your panel through?

A. Yes.

Q. Did you stop at the west end of the bridge before you proceeded? A. No.

Q. And you drove then from the bridge on into Malta? A. Yes, I did.

Q. When you got to Malta, will you tell the Court whether you found any other people who had been in the accident at the hospital?

A. There was a lady and a man there.

Q. And were they receiving attention there?

A. Yes, they were.

Q. Do you know what their names were, or did you learn who they were?

A. Later on I did, it was Mrs. Schoepski and Mr. O'Keefe.

Q. Did you see Mr. Schoepski at any time?

A. No.

Q. Going back to the time, Mrs. Keough, when the collision occurred and the Buick came across the road, can you tell the Court the speed of the Buick, slow or fast, or give him any [601] idea?

A. Well, I thought it was going fast, just the way, the impact of the ditch when he hit it. It just stopped and dust and dirt and stuff flew. It just stood still when it hit, but it swerved so fast in front of me.

Q. When that happened, you were back on the hill? A. Yes.

(Testimony of Mrs. Mabel Keough.)

Q. And it was later—do you know how much later it was again, how soon it was before you pulled up?

A. Well, after the Buick hit the ditch, I drove up.

Q. Immediately?           A. Yes.

Mr. Alexander: You may cross-examine.

· Cross-Examination

By Mr. Doepker:

Q. Mrs. Keough, the vehicle that you were driving on that morning, you say, was a panel car, was it?           A. Yes.

Q. And you gave the type as a GMC, was it?

A. Yes.

Q. It would be the normal delivery type, is that correct?           A. Yes, it was.

Q. And where was the seat, the driver's seat with respect to that panel, was it inside the panel also? [602]           A. Yes.

Q. That is, the body of the cleaner wagon that you were driving, or the cleaner truck that you were driving, comprised this panel which was enclosed on both sides and had windows to the back and sides besides the windshield, is that right?           A. Yes.

Q. It was all enclosed in one vehicle?

A. Yes, it was.

Q. And you were driving along there coming up to this sign you have described to the Court and to us here in a westerly direction, weren't you?

(Testimony of Mrs. Mabel Keough.)

A. Yes.

Q. And approaching the sign that was on the north side of the road that said something about some narrow bridges ahead, correct? A. Yes.

Q. Now, fixing your time now as you are coming up that hill, you would not be able to see the bridge, would you, until you got up to about where that sign was, or at least where the sign was, right?

A. Yes, it would be on top of the knoll.

Q. Then after you reached that sign would be the first chance that you could see down to the bridge, is that correct? A. Yes.

Q. Now, then you finally reached this point to the top of [603] that knoll, didn't you, headed west?

Q. You came up to that point? A. Yes.

Q. Now, then, at any of that time we are now talking about, from the bottom of the hill to the east, up until the time you get to the knoll, at any of that time, was there a station wagon between you and that Pontiac? A. No.

Q. And after you got to the top of the knoll of that hill, and was looking down towards the bridge, was there a station wagon between you and that bridge on that morning?

A. You mean in front of me?

Q. In front of you, yes. A. No.

Q. I believe you testified that as you came up to that knoll where you could observe the bridge, and as you were coming up to the top of it, there was some car following you that honked the horn indicating that they intended to pass?

(Testimony of Mrs. Mabel Keough.)

A. Yes

Q. That car never did pass, did it?

A. It didn't pull in in front of me.

Q. Well, that's what I mean. And the accident happened, then, while the car was coming behind you, didn't it, that station wagon was coming behind your panel job when the accident [604] happened, isn't that your memory of it?

A. No, he started to go around me. He honked his horn, and he started to go around me.

Q. Yes.

A. And I was paying attention to him and the light colored car in front of me. I don't know if he pulled back behind me or what he did, but he didn't stay in front of me.

Q. At any rate, he was honking to pass you as you got up to that knoll, didn't he?

A. He was.

Q. And as far as you were concerned, at no time, did that panel car come between you and the Pontiac, did it?

A. No.

Q. So that you were the first and only car on that occasion that was directly behind that Pontiac, weren't you?

A. Yes.

Q. Now, can you give the Court your best recollection of approximately when this panel truck, or this station wagon, reached a point opposite you, compared to the time of the accident?

A. You mean compared to the time that I pulled up?



(Testimony of Mrs. Mabel Keough.)

Q. No. You know when the collision took place?

A. Yes.

Q. You remember that? A. Yes. [605]

Q. At that time, you had come over the brow of the hill, had you not? A. Yes.

Q. Because you saw the Pontiac going ahead of you, didn't you? A. Yes.

Q. Now, then, with reference to that collision, when did that station wagon reach the brow of that hill to the best of your memory?

A. I just can't answer that, I don't know.

Q. Well, can you do it this way? You brought your car to a stop, didn't you? A. Yes.

Q. And before you brought your car to a stop, this station wagon apparently had honked to go past you, hadn't it? A. Yes.

Q. And then you finally pulled down after the Buick had swerved ahead of you and went into the barrow pit, you finally pulled down further, didn't you? A. Yes.

Q. And then you got out of your car, didn't you? A. Yes.

Q. And as you got out of your car, where was the man in the station wagon, what was he doing, the man in the station wagon? [606]

A. The station wagon was pulled on the opposite side of the road.

Q. He was not on the north side of the road, was he?

A. No, he was on the south side of the road.

(Testimony of Mrs. Mabel Keough.)

Q. He was on the south side of the road, and did you get out first, or did you and he get out about the same time of your respective vehicles, this little short heavy set fellow?

A. I can't recall, I really can't recall if he was out first or not.

Q. But you didn't get out until after you had stopped kind of at the top of the hill, and then after the Buick went into the barrow pit, you pulled up——

A. Yes.

Q. Until that time you didn't get out of your car, did you?

A. No.

Q. And the station wagon pulled up aside of where you last stopped, where you finally pulled up opposite the Buick?

A. Yes.

Q. And that is where the station wagon came up, wasn't it?

A. Yes, but I can't say if it was there before I pulled up or not, I mean I cannot remember.

Q. You don't remember that detail, is that right?

A. No.

Q. But you do know as you were coming to that knoll and to the top of that hill that he was honking his horn to pass you, [607] don't you?

A. Yes.

Q. It was not until you got to the top of the hill that you saw the cars down in there by the collision, was it?

A. No.

Q. You had to be on the knoll before you could see down there, didn't you?

A. Yes.

(Testimony of Mrs. Mabel Keough.)

Q. I show you a photograph that is numbered, it has a number on the photograph, No. 3. I believe it is one of a series of photographs which comprise Plaintiffs' Exhibit No. 4. Now, do you recognize that scene, Mrs. Keough? A. I do.

Q. And what is it that you see there?

A. It is a Pontiac.

Q. And is that the position that you recall that Pontiac to be in from the place that you were up on the knoll of the hill?

A. No, before the accident happened, no.

Q. Before the accident happened, it was proceeding in that direction? A. Yes.

Q. But that was the position after the accident, at least, wasn't it?

A. Yes, as I remember it. [608]

Q. As you remember it. Now, would that also be true looking at this Pontiac as shown by Picture No. 4 of Plaintiffs' Exhibit 4, looking easterly?

A. Well, I never did see it looking this way, I mean this would be the way that I went by it. I never went up to it.

Q. You never got out of your car and went back to look at it to get that view, is that right?

A. No, I did not.

Q. But you did go by the Pontiac. I presume that when you went by, that fender wasn't laying in the highway? A. No, it wasn't.

Q. But there was a man that stood, as you say, on the left side of the Pontiac, and a man at the bridge that guided you through, is that right?

(Testimony of Mrs. Mabel Keough.)

A. Yes.

Q. And you were the first one through, weren't you?      A. I believe I was.

Q. You were the first one that went through after that accident?      A. Yes.

Q. I call your attention to Photograph No. 7 and I ask you to state whether or not the sign at the right-hand side there is the sign to which you refer as being at the top of the knoll?

A. Yes. [609]

Q. Now, further please, can you tell the Court with respect to Photograph No. 12 of Plaintiff's Exhibit 4 where it was that you pulled up your panel delivery truck and stopped?

A. I was stopped in here (indicating).

Q. You are now indicating that you stopped at approximately the point where there is a wrecker stationed on the north side of the road, is that right?

A. That was my last stop, right by the Buick here.

Q. Yes, all right. And the position of your car then would be approximately like the place that the wrecker is in that photograph, only you are headed west, aren't you?      A. Yes.

Q. And that would be with reference to the Buick in the ditch, is that right?

A. Yes.

Q. Now, as I understand it, across the road on the south side, as you got out of your panel, that

(Testimony of Mrs. Mabel Keough.)

station wagon had pulled up on the opposite side, is that right?

A. Yes, he was over in here (indicating).

Q. And you don't remember just exactly when it was that he arrived there? A. No.

Q. Whether he arrived at the same time or not?

A. No.

Q. But you do know he honked to go around you before you got [610] to the top of the hill?

A. Yes.

Q. Is that right, and to where you could see down to the bridge?

A. Well, it was on top of the knoll of the hill when he was honking to go around me.

Q. He hadn't gone around you yet at the top of that knoll, had he? A. No.

Q. Now, as I recall now, your testimony to the Court thus far, you saw the collision, didn't you, you saw the cars come together? A. Yes.

Q. But you wouldn't be in a position to say whether they were—with reference to the different sides of the bridge just where they did come together, would you? A. No.

Q. And you also say that after the Buick went down into the barrow pit that you brought your car up there and came to a stop and then with reference to that time, when was it that a man came up there with two children?

A. After I got out and walked around in front of the panel wagon, he was bringing the two children up to me, and he gave them to me.



(Testimony of Mrs. Mabel Keough.)

Q. You since know who that man was, don't you? [611]

A. Yes.

Q. And that was Mr. O'Keefe, wasn't it?

A. Yes.

Q. In what manner did Mr. O'Keefe bring those children up from the Buick?

A. I don't know which one it was, but he had one by the hand, and the other one was coming by itself, but I don't recall whether it was the boy or the girl.

Q. All right, now, then, as Mr. O'Keefe came up from the Buick and brought the children up there, up until that time, nobody else had been down to the Buick, had they, that you recall? A. No.

Q. At any rate, there was nobody else bringing any children up?

A. No, it was the man I later heard was Mr. O'Keefe.

Q. And then after Mr. O'Keefe brought those children up and you placed them there by the side of your panel truck, did they ever go back to the car, the children? A. No.

Q. And they stayed with you the entire time from the time they were brought up, is that correct?

A. Yes.

Q. And then you brought those children into the hospital, didn't you? [612] A. Yes.

Q. And between the time that Mr. O'Keefe brought them up to you, and the time you brought them to the hospital, they didn't go back down to the Buick, did they? A. No.

(Testimony of Mrs. Mabel Keough.)

Q. And no other man brought them up once or twice besides Mr. O'Keefe? A. No.

Mr. Doepker: That is all, your Honor.

### Redirect Examination

By Mr. Alexander:

Q. I am not too clear, Mrs. Keough, as to where you were on the highway when the station wagon went past you. This photograph which Mr. Doepker showed to you, and which is Photograph No. 7, how far along that scene would you have been, approximately, when the station wagon went to pass, can you point that out to the Court?

A. I believe it was after I had went by the sign, but like I say, I don't know for sure. I believe it was after I went by the sign, I believe it was past the sign and he come up behind me and he honked his horn, and he pulled around and went by, but he didn't pull in front of me.

Q. You do know he pulled up at least alongside of you?

A. Yes, he came out this way (indicating), but he did not [613] go into my lane.

Q. Now, can you tell me where he went when he pulled up alongside of you? A. No.

Q. You don't know whether he proceeded down on the left hand side of the road, or——

A. No, I don't know.

Q. Can you tell the Court how long that station wagon remained down at the—I think you told Mr.

(Testimony of Mrs. Mabel Keough.)

Doepker down at the left hand side at the end of the bridge?

A. I believe it was there when I left with the children.

Q. You think it was there when you left?

A. Yes.

Q. Close to the bridge?

A. Well, it was opposite me, I don't know how far, I can't tell you how many feet it was from the bridge, but it was across from me on the other side of the bridge.

Q. Now, the place where you braked down and ultimately came to the first stop, could you tell the Court approximately where on that picture that would have taken place?

A. Well, it was after the sign, I can tell you that, but otherwise I can't.

Q. Well, can you tell the Court how far it would have been from the bridge?      A. No. [614]

Q. Can you tell the Court how far you pulled up to the Buick?

A. No, I couldn't, I won't estimate that.

Q. Well, was it some——

A. I could see the bridge, I can tell you that. I could see the bridge, but I won't estimate how far it was.

Q. Well, it was far enough that you felt you ought to drive some——      A. Oh, yes.

Q. You didn't get out of your car and go to the accident, you had to drive and did drive to the accident?      A. Yes.

(Testimony of Mrs. Mabel Keough.)

Q. Mr. Doepker also showed you this photograph, No. 3 of Plaintiffs' Exhibit 4, I believe it is, do you know how the Pontiac got in the position shown in that photograph?

A. Well, what do you mean?

Q. Well, just before the accident, was the Pontiac facing and pointing in that direction?

A. No, it was going straight.

Q. It was going straight? A. Yes.

Q. Now, do you know how the front end got turned at the angle shown in the photograph?

A. No.

Q. It wasn't going that way ahead of you? [615]

A. No, as far as I could see, it was on its own side of the road.

Q. And continuing straight ahead?

A. Yes.

Q. Are you sure that no car went across that bridge before you went across?

A. No, I said I wasn't sure, but I thought that I was the first one to go across.

Q. Now, the man who was driving the station wagon, can you tell the Court where he went immediately after he came to a stop?

A. No, I cannot recall.

Q. Or what he did? A. No.

Q. Did you see him leave the scene of the accident at all? A. No.

Mr. Alexander: I think that is all.

Mr. Doepker: There is one thing I forgot to ask her about, may I?

The Court: Very well.

(Testimony of Mrs. Mabel Keough.)

Recross Examination

By Mr. Doepker:

Q. With respect to these bottles that you said were thrown out, that was Mr. O'Keefe that was throwing the bottles out? [616] A. Yes.

Q. Was he throwing them out from the ground or from the Buick, or do you remember?

A. He had some in his hands, I don't know where he got them.

Q. I see. A. He had them in his hands.

Q. And that was after he had brought the children up to you? A. Yes.

Q. Now, did Mr. O'Keefe talk to anybody there at that time, right approximately at that time, was he speaking to anybody?

A. What do you mean?

Q. Did he talk to anybody there at the Buick?

A. He was on the right hand side of the car, and he said to his wife, he says, "How are you," he says, "We will have you out of here in a little while."

Q. And that was right immediately after you had the children, is that right?

A. Well, I don't know if it was after he threw the bottles or before, but I remember him saying that.

Mr. Doepker: I had overlooked asking her about that.

The Court: Is that all?

Mr. Doepker: I believe it is, your Honor.

Mr. Alexander: That is all.



The Court: Step down.

(Witness excused.) [617]

Mr. Doepker: May Mrs. Keough be excused?

Mr. Alexander: Are you going to have some rebuttal?

Mr. Doepker: Very short, we have one witness, very short.

Mr. Alexander: With reference to the testimony of Mrs. Keough?

Mr. Doepker: Well, it is with reference to the position of the cars, yes.

Mr. Angland: Well that would be a violation of the ruling of the Court, as I recall it.

The Court: Yes, I thought all the rebuttal and everything was in except for the testimony of this witness and any rebuttal that was necessary as a result of her testimony. Is that it?

Mr. Doepker: That is what this is, your Honor.

The Court: Very well, call the witness.

Mr. Alexander: For that reason I don't want Mrs. Keough to be excused until we get through with him.

The Court: Very well. [618]

## PLAINTIFFS' REBUTTAL

### RAYMOND O'KEEFE

#### Direct Examination

My name is Raymond O'Keefe: I have previously been sworn in this case and following the collision

(Testimony of Raymond O'Keefe.)

and the Buick car going into the barrow pit, the farthest I got away from the Buick car on that occasion was to the Pontiac, that is where the Pontiac is shown in the picture, that's the farthest I went. I was removed from the scene from the east end of the bridge when the ambulance got there and the ambulance removed me and Mr. Schoepski. During the time that I have just related, there was no car on that highway that pulled up within 10 or 12 feet of the Buick. The car that pulled up closest there was a station wagon, it would not be within 10 feet because the children were back 10 feet east of the bridge. I never got out of the front door when I got out of the Buick and nobody besides me ever took any of the children out of my car. At the time that the children were removed, I didn't see them being moved. I went away first. At no time did the children return to the Buick car and climb back in.

With respect to the situation there and the children climbing back in the car, the car was over what they call the barrow pit, the rear wheels was on the bank where I got out; I had to step way down to the bottom of this hole. I took the little girl out and the little boy out the left rear door. They couldn't possibly climb back in. I didn't get out of the right hand front door of the Buick while I was in the vicinity and before I was taken to the hospital. I went back and took a purse out of the Buick and a watch and I wasn't throwing bottles around there at the time or at any time after the accident.

(Testimony of Raymond O'Keefe.)

Cross-Examination on Rebuttal

I was thrown through either the windshield or the glass in the left door; I was thrown into the glass. I was thrown forward and I was pretty much shaken up, but my memory is clear. As to whether my memory was perfectly clear and I was in full command of my faculties right after the accident, well, I got out and took the youngsters out and I weren't dazed right then. As to how deep it was from the floor of the Buick down to the ground in the barrow pit, I wouldn't know. I would have to put the car back and measure it. I would put it at three feet, 30 inches, anyway, because I had to reach down quite a ways. I expect that little Michael could climb 30 inches without trouble, but I don't think he could climb back in the car, there was nothing to get a hold of.

A. Well, I expect he could.

Q. So, it wasn't impossible for him to climb back in?

A. No—I don't think he could, there was nothing to get a hold of.

Mr. Alexander: That is all.

## PLAINTIFFS' REBUTTAL

WILLIAM C. DOVE

recalled on behalf of Plaintiffs as a witness, having been sworn testified as follows:

## Direct Examination

I have been previously sworn and testified in this case and I testified on the previous hearing. I am the sheriff of Phillips County and have been sheriff and undersheriff for a number of years and I have already described the investigation that I made of the conditions on the bridge following this accident. I came up there soon after the accident happened.

Q. And I wanted to ask you with reference to the conditions that you described on the bridge of the debris and the markings below the cars, where with reference to those were the first scrapings that is shown on the bridge?

Mr. Angland: Just a moment.

Mr. Alexander: Just a minute, to which we object, your Honor, on the ground and for the reason that it is not proper rebuttal and clearly violates our understanding of the Court's order.

The Court: Yes, I don't see what this has to do with this witness' testimony.

Mr. Doepker: Where did the accident happen if the Pontiac started in on its own lane?

The Court: She didn't testify to where the accident happened did she?

Mr. Doepker: I don't think she fixed it.

(Testimony of William C. Dove.)

Mr. Alexander: She said nothing about the debris, certainly.

The Court: Or any markings.

Mr. Doepker: The question is——

The Court: This witness has already testified with reference to that.

Mr. Doepker: I don't think he has testified to the position of these markings compared to where the debris was under the car.

The Court: Well, yes, the record is full of a lot of testimony with reference to that.

Mr. Doepker: Well, there is no jury here, and we wanted to show that this witness would testify, or offer to show that this witness would testify that the scrapings of red on the south rail of the bridge started west of this point where the cars apparently collided. That is the purpose of this testimony.

Mr. Angland: Well, that is a clear violation of the ruling, and leaves us without other witnesses who were there your Honor.

Mr. Doepker: What witnesses were there that knows anything about it.

The Court: The witnesses that made any measurement at all. All the testimony with reference to markings on the bridge and markings on the road, and the point where the car finally came to rest with reference to those markings, that testimony is all in, and it has nothing to do with this witness' testimony.

Mr. Doepker: Okay, your Honor.

The Court: Now, I am sure that the testimony is



(Testimony of William C. Dove.)

in with reference to where the red marks were on the bridge. I don't recall it specifically to mind right now, but it is in there, and it has nothing, at any rate, to do with this witness' testimony. I don't see that it is any rebuttal to anything that she has said. How does it rebut what she has said?

Mr. Doepker: She didn't bring it up to the point of the accident so I guess it doesn't then, I think that is the situation.

Mr. Doepker: Now here is one other thing, your Honor, we would like to offer, and that is concerning the road immediately east of the bridge. I want to ask you whether there was on this occasion in August, 1955, a contour or a condition of the highway that affected cars driving from the top of the knoll to the bridge westerly?

Mr. Alexander: Just a minute, to which we object on the ground and for the reason that it is improper rebuttal, that in all events it would call for a conclusion of the witness, it would be incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Doepker: Your Honor, we would like to offer this testimony and make an offer of proof here that on the date of this accident that this witness, Mr. Dove, knows from his own experience with driving down from the knoll of that hill to the bridge and upon the bridge that there was a contour or condition in the highway immediately to the east of the bridge, which would cause cars to follow the contour over to the south of the center of the bridge.

The Court: Well, your offer is denied for a great number of reasons. If it was admissible, it would have been admissible upon your case in chief, and no foundation has been laid for the testimony of the witness for the purpose for which you offer it, so the offer is denied. I don't care to hear any more argument about it.

Mr. Doepker: I am not going to argue it, if it is a question of foundation——

The Court: It is improper rebuttal, it is part of your case in chief.

Mr. Doepker: That is all, your Honor.

Thereafter the Court made its findings of fact and conclusions of law and ordered judgment entered for defendant and cross-complainant, Walter Schoepski, and against the plaintiffs herein.

Respondent submit and file the above and foregoing as a true, full, correct and complete narrative summary statement of all of the testimony offered or received and all the proceedings had in the trial court at and in connection with the trial of said cause as the same relates to or is involved in or as in any manner affects the issues presented and to be presented for use upon its appeal taken to the United States Court of Appeals for the Ninth Circuit.

Dated this 9th day of July, 1958.

STEPHEN GRANAT,  
DONALD D. COLE,  
GRANAT & COLE,

M. J. DOEPKER,  
M. F. HENNESSEY,  
DOEPKER & HENNESSEY,

By /s/ M. J. DOEPKER,  
Attorneys for Plaintiffs.

Service of the foregoing condensed narrative statement of the proceedings and testimony in the trial court as is claimed by plaintiffs and appellants relates to or is involved in or as in any manner affects the issues presented and to be presented for use upon its appeal taken to the United States Court of Appeals for the Ninth Circuit and receipt of a copy thereof is hereby admitted and acknowledged with all rights and reservations of defendant and respondent preserved and without waiver of any and all of defendant and respondent's rights in the premises, this 10th day of July, 1958.

H. C. HALL,  
EDWARD C. ALEXANDER,  
JOHN H. KUENNING,  
HALL, ALEXANDER &  
KUENNING,

By /s/ JOHN C. HALL,

EMMET C. ANGLAND,  
JOSEPH MARRA,  
ANGLAND & MARRA,

By /s/ EMMET C. ANGLAND,  
Attorneys for Defendant.

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Montana—ss.

I, Dean O. Wood, Clerk of the United States District Court for the District of Montana, do hereby certify that the following papers and documents are the originals filed in Civil Actions Numbered:

1798, Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, Deceased, Plaintiff, versus Walter Schoepski, Defendant.

1799, Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, Deceased, Plaintiff, versus Walter Schoepski, Defendant.

1800, Raymond O'Keefe, Plaintiff, versus Walter Schoepski, Defendant.

said papers and documents being:

Complaint (contained in Judgment Roll).

Petition for removal and jurisdictional statement on removal without duplication of complaint (contained in Judgment Roll).

Answer with counterclaim (contained in Judgment Roll).

Reply (contained in Judgment Roll).

Court's Findings of Fact and Conclusions of Law, (contained in Judgment Roll).

Direction for entry of Judgment (included in Court's Findings of Fact and Conclusions of Law, contained in Judgment Roll).

Judgment (contained in Judgment Roll).

Plaintiffs' Proposed Findings of Fact and Conclusions of Law.

Defendant's Proposed Findings of Fact and Conclusions of Law.

Plaintiffs' Motion for Amendment of Findings and for Making Additional Findings of Fact and Conclusions of Law.

Plaintiffs' Notice of Motion to Amend Findings and a Motion for New Trial.

Plaintiffs' Motion for a New Trial.

Affidavits disclosing newly discovered evidence in support of motion for New Trial.

Court's Decision and Ruling on Motion to Amend Findings and make additional Findings of Fact and Conclusions of Law and Ruling and Decision on Motion for a New Trial.

Notice of Appeal.

Bond on Appeal.

Order granting additional time to file designation of Contents of Record on Appeal.

Appellants' Amended Statement of Points.

Appellants' Narrative Statement of Proceedings and Testimony.

Transcript of Evidence (Court Reporter's) Vols. I, II and III.

Deposition of Raymond O'Keefe.

Minutes of the Court, entered on October 25,



26, 27 and 29, 1956, and on January 14, 1957.  
Satisfaction of Judgment.

Notice to Require Testimony to be Stated in  
Question and Answer Form.

Rseponse to Defendant's and Appellee's Re-  
quirement That certain testimony be stated in  
Question and Answer Form.

Appellee's Record of Testimony to be stated  
in Question and Answer Form.

Appellant's Designation of Contents of Record  
on Appeal.

Appellee's Designation of Additional Portions  
of Record to be included in Record on Ap-  
peal.

I further certify that the following exhibits,  
designated by the Appellant, are transmitted with  
this certificate, as part of the Record on Appeal:

Plaintiffs' Exhibit No. 4, composed of 15 photo-  
graphs.

Plaintiffs' Exhibit No. 5, a legend of the 15  
photographs composing Plaintiffs' Exhibit  
No. 4.

Plaintiffs' Exhibit No. 6, a photograph.

Plaintiffs' Exhibit No. 7, a photograph.

Plaintiffs' Exhibits Nos. 8, 9, 10, 17, 18, 19, 20,  
21, 22, 23, 24, 25 and 26, being stereoscopic  
pictures.

Plaintiffs' Exhibits Nos. 11, 12, 13, 14, 15 and  
16, being 6 photographs.

Plaintiffs' Exhibit No. 34, a plat.

and that they are the original exhibits introduced in evidence at the trial of the above-entitled causes.

Witness my hand and the seal of said Court at Great Falls, Montana, this 28th day of July, A. D. 1958.

[Seal]

DEAN O. WOOD,  
Clerk as Aforesaid.

By /s/ C. G. KEGEL,  
Deputy Clerk.

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[Endorsed]: No. 16125. United States Court of Appeals for the Ninth Circuit. Stephen Granat, as Administrator of the Estate of Mary A. O'Keefe, Deceased, Appellant, vs. Walter Schoepski, Appellee. Transcript of Record. Appeal From the United States District Court for the District of Montana.

Filed and Docketed: August 4, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
in and for the Ninth Circuit

Case No. 16125

District Court No. 1798

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

District Court No. 1799

STEPHEN GRANAT, as Administrator of the  
Estate of Mary A. O'Keefe, Deceased,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

District Court No. 1800

RAYMOND O'KEEFE,

Plaintiff,

vs.

WALTER SCHOEPSKI,

Defendant.

### STATEMENT OF POINTS

To the Honorable Chief Justice and the Associate  
Justices of the United States Court of Appeals  
for the Ninth Circuit:

Now comes the plaintiffs and appellants in each of the above-entitled causes and presents the following Statement of Points upon the appeal in each of the above-entitled causes which are consolidated and which bear the number 16125.

Plaintiffs-Appellants herewith present the points upon which they claim the District Court erred:

1. That the Court committed reversible and prejudicial error in its rulings, comments and decisions in the course of the examination of the highway patrolman, Douglas Hardesty, respecting the point of collision of the vehicles on the bridge.

R. Page 69 et seq. to 75—88 to 91.

2. That the Court committed reversible and prejudicial error in refusing to permit the rebuttal testimony of Sheriff William C. Dove respecting a condition of the road east of the bridge which caused motorists to be pulled over the center of the bridge when driving from the east westerly on said highway.

R. Page 136—138.

3. The Court erred in finding as a fact the matters stated in Findings of Fact number II.

4. The Court erred in finding as a fact the matters stated in Finding of Fact number III to the effect that the defendant and cross complainant was operating his automobile on said bridge at the time of the collision aforesaid in a careful and prudent manner and on his own side of the road; that the

said Mary A. O'Keefe, in operating her automobile upon said bridge, negligently crossed over the center line and her said automobile collided with the automobile owned and driven by the defendant and cross complainant; that the proximate cause of said collision was the negligence of said Mary A. O'Keefe in crossing over the center line of said highway and into the lane of travel of said defendant and cross complainant.

5. The Court erred in finding as a fact the matters stated in Finding of Fact number V to the effect that all of said injuries were proximately caused by the negligence of said Mary A. O'Keefe, and resulted in damage to defendant and cross complainant in the sum of thirty-five thousand (\$35,000) Dollars.

6. The Court erred in its Conclusion of law number III.

7. The Court erred in its Conclusion of law number IV.

8. The Court erred in its Conclusion of law number V.

9. The Court erred in refusing to grant plaintiffs' motions for amendment of Findings of Fact and Conclusions of Law.

10. The Court erred in refusing to grant plaintiffs' motions for new trial.

11. The Court erred in giving judgment for defendant in Cause number 1798.



12. The Court erred in giving judgment for defendant in Cause number 1799.

13. The Court erred in giving judgment for defendant in Cause number 1800.

The Court's decisions were clearly erroneous because they were given and made contrary to undisputed physical facts of the case.

STEPHEN GRANAT,  
DONALD D. COLE,  
GRANAT & COLE;  
M. J. DOEPKER,  
M. F. HENNESSEY,  
DOEPKER & HENNESSEY;

By /s/ STEPHEN GRANAT,  
Attorneys for Plaintiffs  
and Appellants.

[Endorsed]: Filed September 22, 1958.

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